EXHIBIT 1

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1              UNITED STATES DISTRICT COURT
2              SOUTHERN DISTRICT OF NEW YORK
3

   KELLEY CUNNINGHAM and TAMMYE     |
4  CUNNINGHAM, JOHN PATRICK         |
   CONFAR, MICHAEL SNYDER,          |
5  GREGORY BROUSSEAU and ROBERT     |
   SCHWAB Individually and on       |
6  Behalf of All Other Persons      |
   Similarly Situated,              |       Case No.
7                                   | 1:06-cv-03530-RJH
        Plaintiffs,                 |
8                                   |
   Vs.                              |
9                                   |
   ELECTRONIC DATA SYSTEMS CORP.,   |
10                                  |
        Defendants.                 |
11                                  |
   BRIAN STEAVENS, TAMURA L.        |
12 GOLDBERF, DANIEL HEIN, BART      |
   KUHLMAN, STEPHEN LENKNER and     |
13 ROD DELUHERY Individually and    |
   on Behalf of All Other Persons   |
14 Similarly Situated,              |
                                    |       Case No.
15      Plaintiffs,                 | 1:08-cv-10409-RJH
                                    |
16 Vs.                             |
                                    |
17 ELECTRONIC DATA SYSTEMS          |
   CORPORATION,                     |
18                                  |
        Defendants.                 |
19
20  ***************************************************
21                ORAL DEPOSITION OF
22                 MICHAEL EVANS
23               January 26th, 2010
24  ***************************************************
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 1        ORAL DEPOSITION OF MICHAEL EVANS, produced as
 2   a witness at the instance of the Plaintiffs, and
 3   duly sworn, was taken in the above-styled and
 4   numbered cause on the 26th of January, 2010, from
 5   9:13 a.m. to 4:26 p.m. before Daniel J. Skur, Notary
 6   Public and Certified Shorthand Reporter in and for
 7   the State of Texas, reported by stenographic means,
 8   at the Hilton DFW Lakes Executive Conference Center,
 9   William D. Tate Conference Room, 1800 Highway 26
10   East, Grapevine, Texas, pursuant to the Federal
11   Rules of Civil Procedure.
12              A P P E A R A N C E S
13   FOR PLAINTIFFS:
14    Ms. Fran L. Rudich
        Klafter Olsen & Lesser LLP
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        Suite 350
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        Ms. Maureen M. Crane
19    Pitt McGehee Palmer Rivers & Golden
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        mcrane@pittlawpc.com
22
        Mr. Brian L. Bromberg (via teleconference)
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 1              A P P E A R A N C E S
                      (continued)
 2
     FOR DEFENDANTS:
 3
      Mr. Martin T. Wymer
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 1              P R O C E E D I N G S
 2              MICHAEL EVANS,
 3    having been duly sworn, testified as follows:
 4              (9:13 a.m.)
 5              EXAMINATION
 6   BY MS. RUDICH:
 7      Q.    Good morning, Mr. Evans.  My name is
 8   Fran Rudich.  I'm an attorney from New York, and I'm
 9   going to be asking you some questions today in
10   connection with a case that's pending in New York.
11   It's a consolidated case that's called Cunningham
12   versus EDS and Steavens versus EDS.  Please make
13   sure that all your -- all your answers to my
14   questions are verbal.  The court reporter who is
15   sitting to your right is taking down everything
16   that's said here today, and everybody -- it's in
17   everybody's interest that we get an accurate record,
18   so I'm sure that you'll be able to anticipate a lot
19   of my questions.  I'm sure that you'll be able to --
20   before I finish, and you'll -- it's human nature to
21   try to answer, but I just ask that you wait until I
22   finish so that it can be an accurate reflection of
23   what we said here today.
24              If you don't understand a question,
25   please let me know, and we'll try to -- I'll try to
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 1   rephrase it.  If you don't hear a question, also let
 2   me know and the court reporter will read it back.
 3   Do you understand that?
 4      A.    Yes, ma'am.
 5      Q.    Okay.  Also, this isn't a forced march.
 6   You're not hostage in this room.  If you want to
 7   take a break, stretch your legs, any time, just let
 8   me know.  The only caveat to that is that if a
 9   question is pending, I would ask that you answer the
10   question before we take a break.
11      A.    Okay.
12      Q.    Okay?
13      A.    Yes, okay.
14      Q.    Okay.  Mr. Evans, are you on any drugs
15   today that would impair your ability to testify?
16      A.    No, ma'am.
17      Q.    Are you suffering from any illnesses
18   that would impair your ability to testify today?
19      A.    No, ma'am.
20      Q.    Okay.  What -- who is your employer?
21      A.    Hewlett-Packard.
22      Q.    Okay.  When did Hewlett-Packard become
23   your employer?
24      A.    Sometime in the August '09 time frame.
25      Q.    And who was your employer directly prior
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2 (Pages 2 to 5)

6

1 to Hewlett-Packard?
2   A.   EDS.
3   Q.   Did Hewlett-Packard -- did
4 Hewlett-Packard acquire EDS or was -- was -- or did
5 you physically move companies?
6   A.   It was an acquisition is my
7 understanding.
8   Q.   Is there an EDS division or department
9 still in existence?
10   A.   The EDS organization is now part of what
11 is called the enterprise business services division
12 of Hewlett-Packard.
13   Q.   When did it become a part of the
14 enterprise business services division of
15 Hewlett-Packard?
16   A.   That was formally announced sometime in
17 the middle of last year, I believe.
18   Q.   After the acquisition?
19   A.   Yes, ma'am.
20   Q.   And which -- which entity is on your
21 paychecks?
22   A.   Hewlett-Packard.
23   Q.   Okay. And what is your -- what is your
24 title at Hewlett-Packard currently?
25   A.   Human resources manager 2.

7

1   Q.   And how long have you held that
2 position?
3   A.   The position, the function, or the
4 title?
5   Q.   How long have you had that title?
6   A.   Approximately seven, eight years or so.
7   Q.   Did your title -- did the title change
8 at the time of the Hewlett-Packard acquisition?
9   A.   No, ma'am.
10   Q.   Okay. And what position did you hold
11 immediately before HR manager 2?
12   A.   Human resource manager -- I'm sorry,
13 employee relations manager.
14   Q.   And what years did you hold the position
15 of human relations -- human -- employee relations
16 manager?
17   A.   Approximately 1988 until some time in
18 the mid '90s. What I'm hesitating about, my
19 function never really changed. It was just the job
20 title.
21   Q.   Okay. How long have you -- how long
22 have you worked for EDS/HP?
23   A.   Since 1984, a little over 25 years.
24   Q.   And was that a continuous period of
25 time, or was there any breaks in that?

8

1   A.   No, ma'am, it was continuous.
2   Q.   Okay. And what was your functions as a
3 employee relations manager?
4   A.   I had responsibility for the
5 corporation's Title VII compliance along with the
6 Department of Labor compliance function, which
7 Department of Labor compliance is actually the
8 compliance with the employment standards
9 administration of the Department of Labor which
10 encompass both affirmative action compliance and
11 wage-and-hour compliance.
12   Q.   And I think you testified that your
13 functions did not change during the entire -- during
14 the time that you held the position of employee
15 relations manager; is that correct?
16   A.   That's correct.
17   Q.   Okay. And what -- and how about your
18 functions as the HR manager 2; what are your
19 functions?
20   A.   My functions today -- maybe this would
21 be a better -- what -- in 19 -- in 1998, I became
22 focused only on the Department of Labor compliance
23 function, so from 1998 forward to present, my main
24 responsibility was the Department of Labor
25 compliance function. The Title VII compliance, EEOC

9

1 compliance went to some -- another organization,
2 so...
3   Q.   When you say "another organization," do
4 you mean another department within HP -- within EDS
5 or an outside organization?
6   A.   Within -- within the company.
7   Q.   And what --
8   A.   Yes.
9   Q.   -- what -- what department was that?
10   A.   Employee relations department.
11   Q.   Now, when you became focused -- when
12 your function became focused on Department of Labor
13 compliance, were you holding the position of HR
14 manager 2 or employee relations manager?
15   A.   I -- I can't recall the specific dates
16 where they changed -- changed the title over.
17   Q.   Okay. Describe for me your duties and
18 responsibilities as -- when you became focused on
19 DOL compliance.
20   A.   Okay. Basically is to ensure that the
21 company's pay practices and all other related
22 employment activities were in compliance with
23 wage-and-hour requirements, both federal and state
24 requirements.
25   Q.   Okay. And has that changed in any way

3 (Pages 6 to 9)

10

1 during the -- during the time you performed these
2 functions?
3   A.   It changed in any way --
4   Q.   Has it -- has your functions, as it
5 relates to ensuring the company's pay practice and
6 related requirements, has that changed any way
7 during -- over the time that you were responsible
8 for these functions?
9   A.   No. No, ma'am.
10   Q.   And have you -- has your functions
11 regarding DOL compliance, has that been continuous
12 from the --
13   MR. BROMBERG: Hold all calls.
14   Q.   (BY MS. RUDICH) Has that been
15 continuous from the time that you first acquired
16 that responsibility to the present, or was there any
17 breaks in that?
18   A.   There were no breaks.
19   Q.   So that's been your -- and is that your
20 primary duty and responsibility?
21   A.   Today?
22   Q.   Yes.
23   A.   Yes, I'm still performing, yes.
24   Q.   And has it always been your primary duty
25 and responsibility since you obtained that function?

11

1   A.   Yes, with the caveat that in the middle
2 of last year my -- the affirmative action compliance
3 function has been transferred into another group
4 within Hewlett-Packard, so for -- well, again, since
5 the last fall or so, my primary responsibilities now
6 are solely related to wage-and-hour compliance.
7   Q.   Okay. So prior to that, besides
8 wage-and-hour compliance, you also -- your duties
9 also involved affirmative action compliance?
10   A.   Yes, ma'am.
11   Q.   For the Department of Labor or just in
12 general?
13   A.   Well, the Department of Labor
14 requirements, yes.
15   Q.   Now, when we say "Department of Labor
16 requirements," are we talking about the United
17 States Department of Labor requirements?
18   A.   Primarily, yes. OSCCP compliance.
19   Q.   Okay. Now does -- did EDS have a group
20 or a department that was called wage-and-hour
21 compliance or Department of Labor requirement?
22   A.   Yes, that's -- that's my group.
23   Q.   And what is the title of it presently?
24   A.   We're referred to as wage-and-hour
25 compliance.

12

1   Q.   Have you been -- has that always been
2 how you've been referred to within the EDS company?
3   A.   We began with -- being referred to as
4 Department of Labor compliance, which, again, is
5 somewhat misleading because we really don't do
6 things with OSHA or ERISA, and so -- so we kind of
7 tweaked the terminology a little to -- to focus more
8 on wage-and-hour compliance.
9   Q.   And when did -- when did the name
10 change? When did this name change occur?
11   A.   It never really officially changed
12 because there never really officially was a title.
13 It just kind of evolved over the years. I would
14 say --
15   Q.   I'm sorry, go ahead.
16   A.   I would say within the last couple of
17 years, we have been the wage-and-hour compliance
18 team is what we've generally been referred to.
19   Q.   Okay. Now, who -- who do you directly
20 report to?
21   A.   Today, I report to David Deitchman.
22   Q.   Can you spell that, please?
23   A.   D-e-i-t-c-h-m-a-n.
24   Q.   Okay. And what is his title?
25   A.   He is senior counsel. I'm not sure if

13

1 this is the official title, but senior counsel in
2 the employment group in the ED -- excuse me, the
3 Hewlett-Packard legal department.
4   Q.   How long have you reported directly to
5 Mr. Deitchman?
6   A.   I've only reported to David for --
7 officially, for about three weeks, two or three
8 weeks or so.
9   Q.   And who did you report to immediately
10 before Mr. Deitchman?
11   A.   Prior to that, it was Ashley Watson.
12   Q.   And what was Ms. -- it's a Ms., right?
13   A.   Yes.
14   Q.   What was Ms. Watson's title?
15   A.   She is -- is it associate general
16 counsel? She's a direct report to our general
17 counsel.
18   Q.   So she's in the general counsel's
19 office?
20   A.   She reports to general counsel. I don't
21 know if physically they're -- I think -- I know
22 they're both based out of the California corporate
23 office so --
24   Q.   Is that HP corporate office?
25   A.   Yes, ma'am.

4 (Pages 10 to 13)

14

1   Q.   And who -- and how long -- what were the
2   dates that you -- how long did you report to Ashley
3   Watson?
4   A.   That was for about maybe six or seven
5   months prior to David. Basically the -- the move to
6   have me report to David, David was put in between
7   Ashley and I.
8   Q.   Oh, I see, so Mr. Deitchman --
9   A.   Yes.
10   Q.   -- reports to Ashley Watson?
11   A.   Yes, ma'am.
12   Q.   And for how many -- who did you report
13   to prior to Ashley Watson?
14   A.   Nick Linn.
15   Q.   L-y-n-n?
16   A.   L-i-n-n.
17   Q.   And what was Mr. -- and was this at EDP
18   or HP?
19   A.   You know what, I apologize. For about
20   four months after the acquisition, I had reported up
21   through the human resource organization just while
22   they were sorting out what we did and who we should
23   report to, so, and during that interim period, I was
24   reporting to Marcella Zapata. She's part of the
25   human resource organization.

15

1   Q.   Okay. And what was -- what is
2   Mr. Linn's title?
3   A.   He was director over the employment and
4   labor department within the EDS legal department.
5   Q.   So you reported to Mr. Linn before the
6   acquisition?
7   A.   Yes, ma'am.
8   Q.   And how long did you report to Mr. Linn?
9   A.   It was more than ten years. I don't
10   have the exact dates, but...
11   Q.   Currently, how many people work in your
12   department?
13   A.   That report to me?
14   Q.   Well, --
15   A.   I mean --
16   Q.   -- do they all report to you? Are
17   there --
18   A.   How are you --
19   Q.   I mean, there could be direct and
20   indirect reports, correct?
21   A.   Well, that's correct.
22   Q.   Okay. So my question is how many people
23   are in the entire department?
24   A.   Well, I have three people reporting to
25   me.

16

1   Q.   Currently?
2   A.   Yes, ma'am.
3   Q.   And what are their names?
4   A.   Sally Mitchell, Kathy Juilfs, it's
5   J-u-i-l-f-s, and Henry Delgado.
6   Q.   Are there any other people in the
7   wage-and-hour compliance department of HP other than
8   these three people?
9   A.   No, ma'am.
10   Q.   And what is Ms. Mitchell's title?
11   A.   It's human resource -- it's the new --
12   new HP job code, and I can't recall whether it's
13   analyst or -- but it's in the human resource family.
14   Q.   What about Ms. -- what is Ms. Juilfs'
15   title?
16   A.   The same as Ms. Mitchell's.
17   Q.   And what is Mr. Delgado's title?
18   A.   The same.
19   Q.   Okay. And how long has Sally Mitchell
20   worked within your department?
21   A.   Sally has been in -- in my group for
22   approximately 20 years.
23   Q.   So Ms. Mitchell worked in your group
24   before the acquisition?
25   A.   Yes, ma'am.

17

1   Q.   And how long has Kathy Juilfs been in
2   your group?
3   A.   Approximately ten years.
4   Q.   And how long has Mr. Delgado been in
5   your group?
6   A.   Approximately 17 years.
7   Q.   Between 2000 and 2006, were there any
8   other people in your group besides Ms. Mitchell,
9   Ms. Juilfs, and Mr. Delgado?
10   A.   Yes, there was a gentleman named Troy
11   Jefferson, Pauleen Kelmer, and Todd, T-o-d-d,
12   Daproza, D-a-p-r-o-z-a.
13   Q.   Okay. I just want, for the record,
14   Mr. -- Mr. Evans has a binder in front of him that
15   he's referring to, and Ms. -- attorneys for the EDS
16   did provide us with a copy of the binder today, but
17   I'd just like, for the record, Mr. --
18   MS. RUDICH: Mr. Wymer, can you
19   please just state for the record what the bind --
20   what's in the binder --
21   MR. WYMER: Sure.
22   MS. RUDICH: -- and what it is?
23   MR. WYMER: It's a binder that
24   relates to the 30(b)(6) subjects upon which
25   Mr. Evans is appearing as a corporate representative

5 (Pages 14 to 17)

18

1 today and contains documents related to those
2 subjects, all of which have been previously provided
3 to counsel and are Bates labeled in addition to an
4 index with summary information so that Mr. Evans can
5 fulfill his responsibilities -- to help him fulfill
6 his responsibilities as corporate representative.
7   MS. RUDICH: So the summaries have
8 also been provided, right? The summaries are also
9 in here, correct, in the binder?
10   MR. WYMER: Yes. Yes. Everything
11 in front of Mr. Evans is in the notebook we provided
12 to you.
13   MS. RUDICH: Okay.
14   Q.   (BY MS. RUDICH) And just on the --
15 changing subjects here for a minute. Mr. Evans,
16 have you reviewed any other documents to prepare for
17 your deposition here today other than what's in the
18 binder in front of you?
19   A.   I've reviewed a few.
20   Q.   Yes, you have?
21   A.   Yes, ma'am. I'm sorry, yes.
22   Q.   And what documents have you reviewed,
23 additional documents have you reviewed, that are not
24 in the binder?
25   A.   Just various emails, documents, I think,

19

1 that have already been presented as a course of this
2 proceeding just to familiarize or refresh my memory,
3 because we are going back over a period of time.
4   Q.   And why do you think that they have been
5 produced in this proceeding?
6   A.   I -- that's -- I'm assuming that you
7 think that they're relevant.
8   Q.   Oh. No, my question is, how do you know
9 that the documents that you reviewed to prepare for
10 your deposition have been presented to us in this
11 litigation?
12   A.   Oh.
13   MR. WYMER: Well, I'll direct you
14 not to answer to the extent it would reveal
15 communications with counsel.
16   MS. RUDICH: Okay.
17   Q.   (BY MS. RUDICH) What else did you do to
18 prepare for your deposition here today?
19   A.   Well, we -- okay. Yeah, we met and
20 discussed the --
21   MR. WYMER: Don't --
22   A.   I'm sorry.
23   MR. WYMER: I direct you not to tell
24 Ms. Rudich if you had discussions, the substance of
25 any discussions with counseling. You can, of

20

1 course, tell her if you met with counsel.
2   A.   Okay.
3   Q.   (BY MS. RUDICH) When you say "we met,"
4 who are you referring -- who did you meet with to
5 prepare for the deposition?
6   A.   Mr. Wymer and Michelle.
7   Q.   Anselmo?
8   A.   Yes.
9   Q.   Anybody else?
10   A.   No. No, ma'am.
11   Q.   When did you have these meetings?
12   A.   Yesterday.
13   Q.   Okay. And how long did this meeting
14 last?
15   A.   Several hours.
16   Q.   And nobody else was present during this
17 meeting, correct?
18   A.   That's correct.
19   Q.   Okay. Mr. Evans, have you -- did you
20 attend college?
21   A.   Yes, ma'am.
22   Q.   What college did you attend?
23   A.   It was then East Texas State
24 University -- sorry. I graduated from East Texas
25 State University, which is now Texas A&M in

21

1 Commerce. I also attended Baylor University.
2   Q.   But you -- did you attend Baylor
3 University before East Texas State University?
4   A.   Yes. Yes, ma'am.
5   Q.   So you transferred from Baylor to East
6 Texas?
7   A.   Yes, ma'am.
8   Q.   Do you have any graduate degrees?
9   A.   No, ma'am.
10   Q.   Have you -- did you -- have you attended
11 any postgraduate institutes of learning? Like, did
12 you -- did you start to get a postgraduate degree
13 but didn't finish?
14   A.   No, ma'am.
15   Q.   Okay. And what is your degree?
16   A.   It's a bachelor's in business
17 administration.
18   Q.   So you have a BS. Any other postgrad --
19 any other degrees post high school degree?
20   A.   Formal education?
21   Q.   Yes.
22   A.   No, ma'am.
23   Q.   Okay. Are you married, Mr. Evans?
24   A.   Yes, ma'am.
25   Q.   Does your wife work for Hewlett-Packard?

22

1   A.   No, ma'am.
2   Q.   Has your wife -- did your wife ever work
3   for EDS?
4   A.   No.
5   Q.   Do you have any children, Mr. Evans?
6   A.   Yes.
7   Q.   How old are your children?
8   A.   22 and 20.
9   Q.   Okay. Have either of your children ever
10   worked for EDS?
11   A.   No.
12   Q.   Have -- do either of your children work
13   for HP?
14   A.   No.
15   MS. RUDICH: I'm going to ask that
16   this next document be marked as Evans Exhibit 1.
17   It's a multipage document called "Performance
18   Management Program, PMP Annual Review Coaching Guide
19   For Leaders." It has the Bates stamp numbers 000 --
20   I'm sorry, EDS (Plaintiffs Group) 0003799. And just
21   so the record is clear, we have the cover page and
22   then we -- it goes to page -- page 64 through 68.
23   (Deposition Exhibit 1 marked.)
24   Q.   (BY MS. RUDICH) Mr. Evans, please
25   review what's been marked as Evans Exhibit 1.

23

1   (Witness reviews document.)
2   Q.   (BY MS. RUDICH) Okay. Have you
3   reviewed the document, Mr. Evans?
4   A.   Yes.
5   Q.   Okay. Before we start, I just have a
6   quick question about EDS and HP's relationship. Is
7   EDP -- I think you testified earlier that EDP is a
8   division of --
9   MS. CRANE: EDS.
10   MS. RUDICH: I'm sorry.
11   Q.   (BY MS. RUDICH) EDS is a division of
12   HP, correct?
13   A.   EDS is not. The enterprise business
14   services is a division of Hewlett-Packard of which
15   is comprised of the old EDS.
16   Q.   Is EDS -- is there an entity called EDS?
17   A.   No, ma'am.
18   Q.   So there's no more -- today?
19   A.   Today, that's correct.
20   Q.   So there's no more EDS in the -- there's
21   no more corporation known as EDS.
22   A.   Referred to as EDS, that's correct.
23   Q.   Okay. Thank you. Do you know of what
24   date that EDS stopped existing?
25   A.   I -- I don't know. I know that the

24

1   announcement was made sometime in 2009, but I don't
2   have the exact date on that.
3   Q.   Would there be any documents that --
4   withdrawn.
5   Have you seen any documents that
6   would indicate this date?
7   A.   Yes. I mean, I was -- I was informed of
8   it through an announcement, so I'm sure that that is
9   available.
10   Q.   Okay. So you were -- when you say you
11   were "informed of it through an announcement," you
12   mean a written announcement or an email
13   announcement?
14   A.   I believe an email announcement.
15   Q.   Okay. Now, I want to refer your
16   attention back to what's been marked as Evans
17   Exhibit 1. Have you ever seen this document before?
18   And I'm not talking about the document like with
19   just these pages. I'm talking about have you ever
20   seen "Performance Management Program Annual Review
21   Guide for Leaders"?
22   A.   I'm familiar with the program. I don't
23   recall seeing this exact document, but...
24   Q.   Is this one of the documents that you
25   reviewed in connection with your deposition here

25

1   today?
2   A.   No, I haven't seen this before.
3   Q.   Now, I'm going to -- I'm going to refer
4   you to page 66. And before I do, I just want to ask
5   you a few more questions. Do you know how this
6   document was used within EDS, the purpose -- do you
7   know what the purpose of this document is?
8   A.   I believe it is just a general guideline
9   for managers to guide them through the appraisal
10   process.
11   Q.   Okay. So the -- what is the -- what is
12   PMP?
13   A.   It's performance management -- well,
14   yes, it's performance management program. It's the
15   annual performance review.
16   Q.   And who would receive this -- who
17   received this document within EDS?
18   A.   This would have been available to
19   managers. When it was sent out and by whom, I don't
20   know. That's not my area.
21   Q.   Whose area is it?
22   A.   At one time, this fell under the
23   corporate compensation organization. I could not
24   tell you today who -- who it fell under on the time
25   that this is dated, this document is dated.

26

1   Q.   And just for the record, according to
2   the bottom left-hand corner, this document is dated
3   September 14th, 2006?
4   A.   Yes.
5   Q.   Do you see that?
6   A.   Yes.
7   Q.   Okay. And is the corporate compensation
8   organization, is that still a viable department
9   within HP?
10   A.   There is a corporate compensation
11   department, but they do not have this
12   responsibility.
13   Q.   Who does?
14   A.   It falls under the human resources
15   department, and I'm trying to remember who HP refers
16   to them. I think it's a group called talent
17   management.
18   Q.   Okay.
19   A.   That --
20   Q.   Now, I'm going to show you -- I'm going
21   to refer you to page 66.
22   A.   Okay.
23   Q.   Is this -- let me just -- one more
24   question, I'm sorry. Is this document still being
25   used by HP? I'm talking about the PMP annual

28

1   A.   What is a job code?
2   Q.   Yeah.
3   A.   It's a numerical value of a job title.
4   Q.   All right. Can you just -- is it used
5   for all jobs that have similar duties and
6   responsibilities? So for instance, does all -- all
7   the jobs that have the same code, do they have the
8   similar duties and responsibilities?
9   A.   They are intended to. The reality is
10   they -- they do not frequently.
11   Q.   Okay. So can you read what -- just read
12   me what's next to the job code?
13   A.   An EDS-specific numeric code associated
14   with a job title and description. It is used to
15   identify a given set of duties and responsibilities
16   assigned to individuals whose work is of the same
17   nature and level in order to establish market value
18   for the job.
19   Q.   Okay. So you're telling me that this
20   definition is not correct?
21   A.   I'm telling you in reality that's not
22   correct.
23   Q.   My question is, though, is this -- I
24   understand reality, but I'm asking, is this
25   definition correct as --

27

1   review --
2   A.   No. This was specific to EDS, so no, it
3   is not being used today.
4   Q.   And do you know when it -- for lack of a
5   better way, do you know when it was stopped, when it
6   was stopped being used?
7   A.   I don't recall officially, but I would
8   assume sometime when HP acquired us in August, and
9   that would have made our processes invalid at that
10   time.
11   Q.   Now, does -- have you seen a document
12   that's similar to this after HP has taken over, a
13   performance management program coaching guide, have
14   you ever seen any document that's comparable or the
15   same as this after HP took over?
16   A.   Not a document per se. HP uses websites
17   to communicate much more than EDS did, so I have --
18   I have reviewed the performance management website
19   with HP, has this relevant information.
20   Q.   Okay. Thank you. Do you see where it
21   says job code in kind of the -- the second paragraph
22   down on page 66?
23   A.   Yes, ma'am.
24   Q.   What -- what is -- at the time this
25   document was in effect, what was a job code?

29

1   MR. WYMER: Objection, asked and
2   answered.
3   MS. RUDICH: No, he didn't answer
4   it. He said in reality. I'm asking him if the
5   definition set forth on this document is correct.
6   MR. WYMER: Are you asking him if
7   he -- he says in reality, it's not correct.
8   Q.   (BY MS. RUDICH) Under the EDS -- so EDS
9   was giving its employees information that wasn't
10   correct?
11   A.   No. The job code isn't intended to --
12   in a perfect world, the job code would be a...
13   Q.   You can continue.
14   A.   Yes. The job code is intended to cover
15   that.
16   Q.   Okay. So you're saying that EDS -- it
17   was EDS's policy and practice that the -- a job code
18   would -- would cover all jobs --
19   A.   What I'm saying is --
20   Q.   -- that have -- that -- a given set of
21   duties and responsibilities assigned to individuals
22   whose work is of the same nature and level in order
23   to establish a market value for the job. That was
24   EDS's stated corporate policy, correct?
25   MR. WYMER: Objection as to form.

8 (Pages 26 to 29)

30

1 Please answer.
2   A.   I'm sorry.
3   Q.   (BY MS. RUDICH) You can answer.
4   A.   Oh, okay. That's what it is intended to
5 do. I can tell you my experience has been, in
6 reality, it is more applicable to certain jobs than
7 others.
8   Q.   And what jobs is it more applicable to?
9   A.   The more lower level type jobs, for
10 example, call center jobs, clerical jobs. You can
11 pretty much assume that a clerk in one facility
12 might be doing the same job as a clerk in another
13 facility. Again, my experience has been, over the
14 years, the higher up you go, particularly in the
15 technical professional categories, due to a variety
16 of reasons, employees are doing a lot of different
17 type functions that may or may not be what their job
18 code reflects.
19   Q.   I understand, but then how come it
20 doesn't say in this document this is a guideline
21 that we hope to -- that we believe should be met,
22 but we understand that the reality is not all job --
23 this is -- withdrawn.
24   How come -- this document that's
25 given out to the managers of EDS is very specific.

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1 It gives a specific definition of what a job code
2 is, correct?
3   A.   That is, yes, what this stated, yes.
4   Q.   And there's nothing in this definition
5 which states the duties and responsibilities within
6 a job code might deviate or might not be the same.
7 Is there anything in here which indicates that?
8   A.   Not on the definition you're talking
9 about, but I am telling you in reality.
10   Q.   Are there any documents that you've ever
11 seen out of -- out of EDS which states that a job
12 today -- that the duties and responsibilities within
13 a job code might deviate or might not be the same,
14 that were given out to the EDS employees?
15   A.   I'm not aware of any.
16   Q.   So sitting here today at the deposition,
17 you're saying that the job code duties and
18 responsibilities were -- might not be the same, but
19 you haven't seen any document which says that,
20 correct?
21   A.   I have not seen a document, but I have
22 been working in this area for years, and I can tell
23 you the reality is you can't tell, based on a job
24 code, whether somebody is doing the same job as
25 somebody sitting next to them.

32

1   Q.   What does the same nature mean in this
2 definition?
3   MR. WYMER: Objection as to form,
4 please answer.
5   A.   I don't know. I didn't author this
6 document.
7   Q.   (BY MS. RUDICH) Okay. So are you
8 sitting here today saying job codes are just
9 meaningless, meaningless within EDS, because after a
10 certain level people did different things?
11   A.   No, ma'am.
12   Q.   What was the purpose of --
13   A.   I didn't say that.
14   Q.   Then what was the purpose of the job
15 code?
16   A.   The intent of the job code is -- and
17 keep in mind job codes are used for a variety of
18 functions, not just exempt or nonexempt. They help
19 determine career paths, they help determine salary
20 ranges. So the intent is to -- to the extent
21 possible, to -- to try to job code individuals
22 according to the job description; however, certain
23 job titles, the reality is certain job titles within
24 the company, based on the fact that we're a services
25 company, the customers require different type of

33

1 things, just a variety of issues, that is not
2 typically the reality.
3   Q.   But what is the purpose of a job within
4 EDS? What was the purpose of a job code within EDS?
5   A.   To try to categorize the generalized
6 functions of -- of an individual. That's the
7 purpose of it -- or that -- excuse me, strike that.
8 That's the intended purpose.
9   Q.   Now, at any time during your career, did
10 you come to the -- did you -- when did you become
11 aware that for certain job codes the reality of the
12 job description didn't match the job code?
13   A.   Oh, for certain job titles, first of
14 all, let me say that. This is not across the board
15 with every job title. But when I -- one of the
16 reasons I started focusing on wage-and-hour
17 compliance is because this came to a realization
18 back in the late '90s.
19   Q.   So from the late '90s to the present,
20 you weren't able to make it so that all similarly
21 situated people who were -- all people who were
22 doing the similarly situated duties and
23 responsibilities did not have the same job code, you
24 have not been successful in -- in -- in creating
25 uniform job code --

9 (Pages 30 to 33)

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1   MR. WYMER: Objection --
2   Q.   (BY MS. RUDICH) -- since the 1990s?
3   MR. WYMER: Objection as to form.
4 Please answer.
5   THE WITNESS: I'm sorry?
6   MR. WYMER: Please answer.
7   A.   Could you repeat the question, please?
8   Q.   (BY MS. RUDICH) So is it your testimony
9 today that for certain job titles, since the 1990s,
10 you have not been able to formulate a job code that
11 adequately and properly states that everyone who has
12 the job code is doing similar duties and
13 responsibilities?
14   MR. WYMER: Objection as to form.
15 Please answer.
16   A.   In certain job titles, that has been
17 very difficult to do.
18   Q.   (BY MS. RUDICH) Haven't you -- but you
19 did the best you can, correct?
20   A.   It's an ongoing process.
21   Q.   Exactly, but you've done the best you
22 can, correct?
23   A.   We are -- yes.
24   Q.   And so when you say the job code --
25 everyone who is doing similar work, it's -- it's --

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1 you would believe that as of today or as of the time
2 that you last -- withdrawn.
3   So do you believe that the job
4 coding is as good as it is going to get, or are you
5 constantly fixing it?
6   A.   We're constantly fixing it.
7   Q.   Okay. And do the employees rely on what
8 their job code is in order to know what salary
9 they're entitled to?
10   A.   I can't speak to the employees. There
11 are certain salary ranges based on the job code, so
12 that does play into it. Again, there are certain
13 circumstances where employees fall outside of those
14 salary ranges, either above or below.
15   Q.   If two jobs didn't have similar duties
16 and responsibilities, would they have the same job
17 code?
18   A.   I'm sorry?
19   Q.   If two jobs, you know, did not have the
20 same duties -- similar duties and responsibilities,
21 would they have the same job code?
22   A.   There's -- there can be a variety of
23 different positions within a certain job.
24   Q.   That's not my question. My question is,
25 if two jobs did not have similar duties and

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1 responsibilities, would they have the same job code?
2   A.   They shouldn't in the intent of the
3 company, but the reality is they often do.
4   Q.   And it's your job to try very hard to
5 make sure that two jobs that don't have similar job
6 duties and responsibilities do -- don't have the
7 same job codes, correct?
8   A.   Well, there's several groups that have
9 that responsibility.
10   Q.   But that's one of your group's
11 responsibilities, correct?
12   A.   From an exempt/nonexempt function,
13 correct.
14   Q.   Then what other groups within the
15 company have the responsibility of ensuring that
16 jobs with similar duties and responsibilities have
17 the same job codes?
18   A.   The human resources organization, the
19 various groups within the human resources
20 organization that have to do with appraisals, salary
21 ranges, things along those lines.
22   Q.   Do you know the names of these groups?
23   A.   Corporate compensation would be one, and
24 talent management.
25   Q.   Now, why would you have positions with

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1 different job duties that have the same job code?
2   A.   It's not intended. That's not what we
3 set out to do. The joke -- and it's not a joke.
4 The general feeling is our department is, for
5 example, infrastructure analyst, that if you had a
6 hundred different infrastructure analysts and took
7 them out of random and put them in our office, you
8 would have a hundred different functions, be doing a
9 hundred different things. That's not intended to be
10 like that, that's just the way, based on customer
11 requirements and different accounts requirements,
12 different skill sets, that's the way it falls out.
13   Q.   They're supposed to be doing similar
14 things. They're supposed to be doing similar duties
15 and responsibilities, if -- employees that have the
16 same job code are supposed to be doing similar
17 duties and responsibilities, correct?
18   A.   They are -- they should be. I mean, we
19 try to get them to do that. The reality is, again,
20 real world, that's not the way it works out.
21   Q.   Then why wouldn't you just put them in a
22 different job code?
23   A.   Well, we do when we identify these
24 issues.
25   Q.   So you put them in a job code in which

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1 they're more -- in which their duties and
2 responsibilities are more similarly situated,
3 correct?
4   A.   We try to when we identify them.
5   Q.   Right.
6   A.   Yeah, but again, certain job codes this
7 is more prevalent in than others.
8   Q.   Oh, I understand that there might be
9 individuals that don't do exactly what the job
10 codes, but isn't it ED -- wasn't it EDS's corporate
11 policy to get everyone who is doing similar --
12 everyone who has similar duties and responsibilities
13 to have the same job code?
14   A.   No. I wouldn't say there's a policy on
15 that. That is our intent to do that.
16   Q.   That's your goal, correct?
17   A.   That's -- yes.
18   Q.   That's what you want.
19   A.   That's what we want.
20   Q.   And you work very hard to -- I would
21 imagine that you and your -- your colleagues work
22 very hard to try to implement the stated goal or
23 purpose of the company, correct?
24   A.   We give guidance, but the managers in
25 the field use their discretion and sometimes they

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1 follow it, sometimes they don't.
2   Q.   But isn't their review -- aren't there a
3 number of reviews when -- when an employee is
4 assigned to a job code? It's not just the manager
5 in the field. Don't they have to get approval from
6 somebody -- from people in corporate?
7   A.   Not particularly. As long as they
8 assign a -- a current job code, then it's -- it's
9 assigned.
10   Q.   And there's no review of it, there's no
11 database in which people in corporate review that?
12   A.   No, I mean, what -- review for what?
13   Q.   If an employee is hired --
14   A.   Yes.
15   Q.   -- in the field, correct?
16   A.   Correct.
17   Q.   They're assigned a job code.
18   A.   Correct.
19   Q.   How does the person who is assigning the
20 job code know what job code to assign that person?
21   A.   They're -- they can contact corporate
22 compensation for guidance. There's -- they can look
23 at various functional overviews, job descriptions
24 that are available that try to point them in the
25 right direction, job family wise.

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1   Q.   So they put -- they look at what this
2 person is going to be doing and they say who --
3 which job code -- which job code are they -- do they
4 have similar duties and responsibilities to,
5 correct?
6   A.   Not -- no. I -- I --
7   Q.   How would somebody -- if -- how would
8 somebody in the field know which job code to assign
9 a newly hired employee?
10   A.   They -- the managers have a general
11 feeling on what their employees in their department
12 should be doing and will make a job assignment based
13 on that, which often changes on a week-to-week basis
14 based on customer requirements and -- and things
15 along that line, so --
16   Q.   I'm sorry. So what is a change -- why
17 would it change? Do they review any documents, any
18 corporate documents, to ensure that the person's in
19 the right job code?
20   A.   It's -- no, there's no documents. I
21 mean, --
22   Q.   There's no --
23   A.   -- you can be hired, for example, to --
24 to maintain a system, and a week later, the customer
25 says we don't want to maintain the system anymore.

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1 We want to design a brand new one. So your
2 functions have changed. That may -- that may pass
3 you over into another job title.
4   Q.   Right. Because then you would look at
5 the different job code to see which duties and
6 responsibilities that person is now doing and which
7 one are they similar to.
8   A.   Yes. And what I'm saying is the intent
9 is when that changeover happens, the manager should
10 go in and change the job title to reflect that. The
11 reality is, I can tell you from experience, they
12 don't do that.
13   Q.   What's the purpose for having job codes?
14   A.   Well, we -- again, salary ranges, career
15 paths. We use job codes for government reporting
16 for EEO 1 purposes.
17   Q.   For consistency, correct?
18   A.   For tracking.
19   Q.   For consistency.
20   A.   That's the intent of it.
21   Q.   And you want to have job -- the purpose
22 of job codes is to have consistency no matter where
23 an employee worked, correct?
24   A.   That's the intent of it.
25   Q.   Okay.

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1   A.   Yes.
2   Q.   And no matter for which client the
3   employee worked for, correct?
4   A.   Yeah. The intent wouldn't change from
5   client to client.
6   Q.   Now, what's a job family?
7   A.   That's a group of job codes that
8   comprise a -- a similar career path, if you will,
9   human resource analyst, for example, and a
10 specialist and going up through the human resource
11 career paths would all be considered in the same
12 family.
13   Q.   What do you mean by "similar career
14 path"?
15   A.   Within a certain industry or field.
16   Q.   And this would be a -- and it would be
17 relating to the same field or industry?
18   A.   Yes, similar field, yes.
19   Q.   What is the purpose of having job family
20 classifications?
21   A.   I believe that's really -- well, that's
22 not my area of responsibility, but it's typically
23 used more for career paths, succession planning,
24 things along that line.
25   Q.   I'm just having a hard time

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1   understanding what you mean by career path, meaning
2   that if somebody works in -- if two employees work
3   at different -- different, let's say, clients, you
4   want to make sure they have similar career paths?
5   A.   Well, a career path would mean as you
6   get very good at your job, what's the next step up,
7   you want to continue to do the same job over and
8   over, or do you want to move up and be challenged
9   and thereby open yourself or make it available to
10 get raises, pay raises.
11   Q.   But these job families aren't related to
12 where a -- which client -- there's no -- these job
13 families don't -- aren't related to the client that
14 an -- that an employee works for, correct?
15   A.   That's correct.
16   Q.   It's just -- it's a companywide -- it's
17 a companywide designation, correct?
18   A.   Yes.
19   Q.   And it's the same with a job code. A
20 job code isn't specific to -- meaning a job code
21 designation isn't specific to a specific -- to an
22 individual client, correct, it's a companywide job
23 code, correct?
24   A.   The job code is.
25   Q.   Yes.

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1   A.   The job position is not.
2   Q.   Okay. So the job -- and so a job code,
3   it doesn't matter -- the job code is the same
4   whether you work for General Motors or Alcoa,
5   correct?
6   A.   Well, they are available to the managers
7   of those groups --
8   Q.   It's the --
9   A.   -- to assign.
10   Q.   -- same job code, I mean. You don't
11 have different job codes for different clients?
12   A.   I'm not sure I understand your...
13   Q.   So you have a job code 3 -- 3402070,
14 correct?
15   A.   Yeah, I gotcha.
16   Q.   So that job code 34070 is a companywide
17 job code. It's not specific --
18   A.   Right.
19   Q.   -- for a specific client or specific
20 location?
21   A.   I'm sorry. You're correct. Yes.
22   Q.   And it's the same with job families,
23 that's a companywide designation, correct?
24   A.   Correct.
25   MS. RUDICH: Can we take a break? I

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1   think my cocounsel needs a break.
2   (Recess held.)
3   Q.   (BY MS. RUDICH) Mr. Evans, is one of
4   the purposes of the job codes to ensure that -- was
5   to ensure that EDS was in FLSA compliance?
6   A.   Yes, that's one of the -- one of the
7   purposes.
8   Q.   So if the job codes weren't accurate,
9   then would it be that EDS was not in FLSA
10 compliance?
11   A.   Not necessarily.
12   Q.   Now, when you found out that a job code
13 -- people who were not doing similarly situated
14 tasks were --
15   (Phone interruption.)
16   Q.   (BY MS. RUDICH) What would you do when
17 you found out that people who were not doing the
18 similarly situated tasks but were in the same job
19 code, what would you do?
20   A.   We would talk to the managers to get an
21 overview of what the job entails. We would try to
22 find out how many other people in the manager's
23 organization were doing those types of functions.
24   Q.   And then you would reassign -- then you
25 would change the job code?

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1   A.   If necessary.
2   Q.   So that it would reflect others -- it
3 would reflect the fact that they were doing the
4 other -- the things that the job code was -- the
5 things that the job code said they were supposed to
6 be doing, correct?
7   A.   We would change the job codes when there
8 was a -- a -- a needed correction in exemption
9 status, but if we interviewed or conducted a review
10 and determined that a person was not correctly coded
11 but they were still exempt, for example, we would
12 make the recommendation, go ahead and find a better
13 job code. That's out of my area. My focus was on
14 the exempt/nonexempt.
15   Q.   Okay. But you would -- but you would
16 find -- you would say, go ahead, find the job code
17 that was better suited for the duties and
18 responsibilities, correct?
19   A.   Right.
20   Q.   Okay. And that was to ensure that the
21 job codes -- that everybody who had the same job
22 code were doing similarly -- similar -- had similar
23 duties and responsibilities, correct?
24   A.   That was our intent.
25   Q.   That was your goal?

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1   A.   Well, yes, when -- well, that was our --
2 ultimately, what our -- our -- well, that's our
3 intent to --
4   Q.   Okay. So the intent is that everybody
5 who has the same job code is doing similar -- have
6 similar duties and responsibilities?
7   A.   That's -- yes.
8   Q.   Okay. Okay.
9   MS. RUDICH: I'm going to ask that
10 the next document be marked as Evans Exhibit 2.
11 It's a document called module -- module to --
12 performance management program tool help 2006. This
13 is Evans 2 and it has Bates stamp number EDS
14 (Plaintiffs Group) 0003908.
15   (Deposition Exhibit 2 marked.)
16   (Witness reviews document.)
17   Q.   (BY MS. RUDICH) Mr. Evans, have you
18 ever seen this document before today?
19   A.   I don't recall seeing this exact
20 document, but I am familiar with the contents.
21   Q.   How is it used? What is this
22 document -- how is this -- how is this document
23 used?
24   MR. WYMER: Objection as to form.
25 Please answer.

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1   A.   Similar to the last document. This is
2 a -- an assistance guideline, to help managers
3 through the PMP process.
4   Q.   (BY MS. RUDICH) PMP is the evaluation
5 process?
6   A.   That's correct.
7   Q.   And is it -- do you know who drafted
8 this?
9   A.   I do not.
10   Q.   When was it in effect?
11   A.   Well, it's dated 2006, so I'm assuming
12 this particular version was in effect then.
13   Q.   Is it currently in effect?
14   A.   No. It would not be.
15   Q.   Please look at page 74 of 77.
16   A.   Okay.
17   Q.   Where it says: Job code and
18 EDS-specific numeric code associated with a job
19 description. It is used to identify a given set of
20 duties and responsibilities assigned to individuals
21 whose work is of the same nature and level in order
22 to establish market value for the job.
23   What does this -- what does this
24 mean?
25   A.   It's a definition of the job code.

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1   Q.   Right. And what does it mean, to
2 establish market value for the job?
3   A.   That's to help establish the pay rates
4 for an individual performing a certain type
5 function.
6   Q.   And why would you need to establish
7 market value for the -- how does a job code help to
8 establish market value?
9   A.   There are -- I'm sorry, can you repeat
10 that?
11   Q.   How does a job code help to establish
12 market value?
13   A.   The corporate compensation group
14 conducts salary surveys to help determine within any
15 given market area what is the going pay rate for
16 people performing certain general -- generalized
17 tasks, and then this is a guide that's used as a
18 guideline to help managers in the new hiring process
19 or promotional -- just pay issues for their people.
20   Q.   But how does a job code help to
21 establish the pay rates?
22   A.   Well, the job code doesn't establish the
23 pay rate. That's all --
24   Q.   How does it help?
25   A.   The suggested salary ranges are based or

13 (Pages 46 to 49)

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1 attached to particular job codes, so it -- then a
2 manager can look at any given job code and determine
3 what the suggested pay range would be.
4   Q.   So each job code has a specific pay
5 range?
6   A.   A suggested pay range, correct.
7   Q.   Right. And that's the same pay range
8 regardless of where the employee with that job code
9 works. For instance, if he works -- it doesn't
10 matter which client he works for. It's the same
11 suggested pay rate -- pay range, correct?
12   A.   It's not dictated by account, but it is
13 dictated, to an extent, by location. For example --
14   Q.   How --
15   A.   Sorry.
16   Q.   How is it dictated by location?
17   A.   An information analyst in Plano, Texas,
18 would have a lower pay rate than an information
19 analyst in New York City.
20   Q.   No. I'm talking about the pay range.
21 Is the pay range the same for -- for a job code
22 regardless of where -- the highest that a person in
23 the job code could get and the lowest a person in
24 the job code could get, is that the same throughout
25 the country?

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1   A.   Well, there is a set range, but then
2 that range is modified based on where a person is
3 within the -- within the country.
4   Q.   But it's -- but it's a set range
5 regardless of where -- that pay range covers the
6 whole country, correct?
7   A.   Yes. It's a suggested range, though.
8 Managers do not -- it's just a tool to give them an
9 idea.
10   Q.   So then I'm trying to understand, then,
11 how a job code helps establish pay ranges if it's
12 just a suggested pay range, if it's just suggested
13 and they can do whatever they want.
14   A.   Well, they can't -- it's -- it's
15 intended to -- to provide guidance to a manager,
16 but, again, in reality, we acquire companies and
17 will take individuals on to -- on to our payroll
18 making higher than what the suggested pay range
19 would say they would -- they would make. So,
20 again --
21   Q.   I understand those are -- I understand
22 that those are, you know, exceptions. I'm talking
23 about generally, how does a job code help establish
24 market value for the job?
25   A.   I'm -- I'm -- obviously don't understand

52

1 your question because I think --
2   Q.   It says --
3   (Simultaneous conversation.)
4   Q.   (BY MS. RUDICH) It says it right here
5 in EDS's document that one of the purposes is to
6 establish market value for the job. Do you see
7 that?
8   A.   Yes. Yes.
9   Q.   So -- and my question is if, in fact,
10 these are suggested pay ranges, how would a code
11 help that then?
12   A.   Well, without it, the manager wouldn't
13 have any idea what the going rate would be.
14   Q.   So he uses a job code to know what the
15 going rate is throughout the country, correct?
16   A.   For the employees in his --
17   Q.   In that job code --
18   A.   The locales.
19   Q.   In that job code, correct?
20   A.   Yes.
21   Q.   But are the pay ranges specific to the
22 locales, or is the pay ranges companywide? Do you
23 have a specific -- do you have a different piece of
24 paper or a different pay rate -- is there a piece of
25 paper which says for X client this is the pay range,

53

1 for Y client this is the pay range?
2   A.   Not for a client, but for location, yes.
3   Q.   But everybody in that location has the
4 same pay range, correct?
5   A.   Suggested pay range, correct.
6   Q.   Okay. Now, if somebody isn't doing the
7 job duties -- withdrawn.
8   And -- do you see where it says job
9 family?
10   A.   Yes.
11   Q.   What is it -- a group of jobs relating
12 to the same nature of work but requiring different
13 levels of skill, effort, and responsibility. Do you
14 see that?
15   A.   Yes.
16   Q.   What does it mean by a group of jobs
17 relating to same nature of work?
18   A.   This would be a -- again, I'll use the
19 human resource example, that within the field of
20 human resources there's everything from a lower
21 level human resource clerk ultimately to a human
22 resource manager. A job family would include all of
23 those lines of progressions.
24   Q.   How many job families does -- did EDS
25 have?

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1   A.   I don't know. That was not my area.

2   Q.   Wasn't that one -- where is the

3 30(b)(6)? Did you do anything to learn about how

4 many job families there were to prepare for your

5 deposition here today?

6   A.   No.

7   Q.   Did you speak to anybody and ask them

8 how many job families there were?

9   A.   No.

10   Q.   Did you look at any documents to educate

11 yourself on how many job families there were?

12   A.   No.

13   MR. WYMER: That's not one of the

14 subjects he's here on.

15   MS. RUDICH: It's number 17.

16   MR. WYMER: 17 is not -- 17 is

17 should defendants assert that individuals who work

18 or worked for defendants in jobs, the same job code

19 prefix of 3 who had primary duties -- subject 17

20 relates to 29 CFR 778.113, not job code.

21   MS. RUDICH: It's also part of

22 number 4.

23   MR. WYMER: I read number 4, which

24 Mike is appearing on, defendants' manner of

25 compensating individuals who work in jobs with the

55

1 job code prefix of 3 or who had the primary duties

2 of installing, maintaining, supporting computer

3 software. Sorry, we just don't read manner of

4 compensating individuals to include how many job

5 code families there are.

6   MS. RUDICH: Well, one of the -- one

7 of the -- one of the issues here is whether or not

8 compensating means whether you get overtime or not,

9 and whether you get overtime or not is -- goes to

10 whether or not there's similarly -- FLSA compliance.

11 FLSA compliance is whether or not you properly

12 classify a group or a group of people. All right.

13 I mean, we could argue about this. If you're saying

14 you don't know how many job families there are,

15 that's fine. This is a legal issue, but we'll --

16 not going to hold up the dep for this.

17   I'm going to ask that this document

18 be marked as Exhibit Evans -- Evans Exhibit 3. It's

19 a multipage document entitled "Job Code Training US

20 HR Team" having the Bates stamp number EDS

21 (Plaintiffs Group) 0007020 through 0007033.

22   (Deposition Exhibit 3 marked.)

23   MS. RUDICH: Just so the record is

24 clear, this deposition is just solely for phase 1,

25 correct, for class cert and collective action?

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1 That's what we're taking the position.

2   MR. WYMER: I think the deposition

3 is on certification issues. Obviously some of the

4 subject Mike's appearing on go to good faith

5 compliance and willfulness as well, but --

6   MS. RUDICH: Yeah.

7   MR. WYMER: Yeah.

8   MS. RUDICH: Just to be clear, so I

9 don't want to think we're waiving any right to ask

10 other questions about documents or introducing to

11 recall Mr. Evans as a fact witness and/or a 30(b)(6)

12 witness for -- for liability and/or damage

13 questions.

14   MR. WYMER: We have taken the

15 position that Mike is appearing on the subjects that

16 we designated from your 30(b)(6) notice throughout

17 this phase of discovery. We have only objected to

18 discovery related to damages because it's our

19 position that what people did during the day,

20 whether that's liability or certification, it's all

21 jumbled together, and we haven't tried to draw that

22 fine distinction.

23   MS. RUDICH: Well, we are today, so

24 I mean, I think that the order is clear and that

25 this phase of discovery goes to certification

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1 issues, meaning are they -- are the people similarly

2 situated. Whether they were properly classified as

3 exempt or nonexempt and what they did, it's our

4 position that that goes to second phase of

5 discovery, so...

6   MR. WYMER: I guess we reserve our

7 position on whether there's a distinction between

8 whether people are exempt and whether people are

9 similarly situated depending on how this plays out.

10   Q.   (BY MS. RUDICH) Mr. Evans, I refer you

11 to page 9. First of all, I apologize, what is this

12 document?

13   A.   Appears to be a job code training tool

14 established by the US HR team.

15   Q.   And what is -- what is a job code

16 training tool?

17   A.   Just a minute. Let me look through

18 because I -- I don't recall seeing this before.

19   This appears to be a general tool

20 intended to help managers with the job coding

21 exercise.

22   Q.   What's the difference between a job code

23 and a job title?

24   A.   A job code is the numeric representation

25 of a job title, so could have human resource analyst

15 (Pages 54 to 57)

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1 is the job title and then 3 -- just a series of
2 numbers would be the job code representing the
3 numerical version of the job title.
4   Q.   So does everyone with the same job title
5 have the same job code?
6   A.   Yes, officially, yes.
7   Q.   Now, where -- I refer you to page 9
8 where it says job families. Is one of the purposes
9 of having job families so that there is a uniformity
10 of duties and responsibilities within a job family?
11   A.   My understanding is the purpose of the
12 job family is to have a -- a -- job families is more
13 indicative of career progression, so the intent of
14 the job family is to kind of gather what would be
15 the typical job progression for a certain --
16 engineering, for example, an individual with an
17 engineering background, what would be their typical
18 job progression up into an engineering leadership
19 position.
20   Q.   And that's the same job progression for
21 everyone in that job family?
22   A.   People aren't bound by that, but the job
23 family, each job family would have -- a job family
24 would have all the job codes in -- strike that.
25   I'm not sure I'm answering the

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1 question that you were asking.
2   Q.   All right. I'm going to ask the
3 question again. Is one of the purposes of having
4 job families so that there is a uniformity of duties
5 and responsibilities within that job family?
6   A.   That would be one.
7   Q.   Okay. What does a collection of jobs
8 means in this -- on this -- in this definition?
9   A.   Well, a collection of job are the number
10 of jobs -- job codes that make up that job family.
11   Q.   And what does similar types of work mean
12 in this definition, in this EDS definition of job
13 families?
14   A.   What's intended to be here is the
15 industry type, similar -- again, engineering would
16 be one type of work, human resources would be
17 another type of work, legal would be --
18   Q.   And service delivery would be another
19 type of work? Technical delivery would be another
20 type of work?
21   A.   Correct.
22   Q.   Okay. And they would have similar --
23 and so anybody within the service delivery family
24 would -- any job code within the service delivery
25 family would involve similar types of work according

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1 to EDS's document, correct?
2   A.   Not necessarily.
3   Q.   I said according to EDS's document.
4   A.   Well, yes, that's what the document
5 says.
6   Q.   Okay.
7   A.   I will say job families entail -- or at
8 one time entailed exempt and nonexempt functions.
9   Q.   I understand, but they involve similar
10 types of work, correct? EDS's own document says
11 that.
12   MR. WYMER: Objection as to form.
13 Please answer.
14   A.   Well, they might be in the same type of
15 industry, but not the same type of work. If it was
16 the same type of work, they would all be either
17 exempt or nonexempt.
18   Q.   (BY MS. RUDICH) But I thought you said
19 it's a progression, so the lowest progression would
20 be exempt, the highest -- nonexempt, the highest
21 progression would be exempt, but it would be the
22 same type of work, correct?
23   A.   No, incorrect.
24   Q.   So you mean to tell me that if I -- if I
25 showed you a piece of paper that -- that listed the

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1 job families that -- that the people with the
2 lowest -- on the lowest rung of the ladder wouldn't
3 have similar duties and responsibilities of people
4 on the -- with the higher level -- of higher rungs
5 of that job family?
6   A.   That's correct. They might be in the
7 same industry, but the person on the lower rung
8 might be doing the lowest level type of work where
9 the person on the highest rung is designing
10 software.
11   Q.   But it's a similar type of work,
12 correct?
13   A.   No.
14   Q.   Maybe -- maybe it's not -- maybe it's
15 not the details aren't the same, but they have to be
16 in the similar -- it says right in their own
17 document that they involve similar types of work.
18 So are you saying that EDS's document is false, is
19 not true?
20   A.   I am saying there was a better way to
21 have said that because that's not the intent of it.
22   Q.   I understand it's not the intent, but
23 that's what EDS's own document says, correct?
24   A.   Well, that's what it says.
25   Q.   Not going to mark this now, but I'm just

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1 going to reflect -- reflect -- describe it for the
2 record. It's service delivery job family,
3 telecommunications competency based matrix,
4 individual performer. I'll mark this later, but I'm
5 just going to show this to you right now. And it
6 has Bates stamp number 0001161, 0001162, 0001163,
7 0001170 and 0001171. I'm going to refer you to the
8 last page of this document. Do you see that?
9 A. Yes, ma'am.
10 Q. And isn't this -- is this what you were
11 referring to as a job progression?
12 A. Yes.
13 Q. Within a family?
14 A. Yes.
15 Q. And is it -- and do you see where it
16 says telecommunications analyst?
17 A. Yes.
18 Q. 34 -- and I think that's 34500?
19 A. Yes.
20 Q. Now, is that -- is 34500 an exempt
21 position or nonexempt position?
22 A. Exempt.
23 Q. And I'm going to show you what's been
24 marked as telecommunications -- and do you see the
25 category directly to the left where it says

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1 telecommunications technical senior 51010?
2 A. Technician senior?
3 Q. I'm sorry, technician senior?
4 A. Yes, I see it.
5 Q. Is that an exempt or nonexempt position?
6 A. That's a nonexempt.
7 Q. Now, do you see the first -- and this is
8 a listing of key job roles performed in each code,
9 correct?
10 A. Yes.
11 Q. Now, do you see right -- the first key
12 job role under the telecommunications technician
13 senior, the nonexempt job is customer service
14 representative. Do you see that?
15 A. Yes.
16 Q. And then if you look down to the --
17 that's also listed in the telecommunications
18 analyst, correct?
19 A. Yes.
20 Q. And that's also -- so that means that
21 they have -- that they have the same -- one of
22 the -- they have one -- they have a -- key job roles
23 is the same, correct?
24 A. One of them would be.
25 Q. Yeah, so they're doing -- they're doing

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1 not only similar work, they're doing the same work
2 in that particular task, correct?
3 A. The -- that's a generalized statement.
4 Q. I understand, but according to this
5 document.
6 A. Well, according to the document. I will
7 put two caveats in. The percentage of time that
8 they're spending could be, you know, 1 percent and
9 50 percent.
10 Q. Okay.
11 A. And also, again, going back to my
12 earlier comments, what goes on in the real world
13 might be different than what's reflected on paper.
14 Q. I understand, but I'm just saying that,
15 based on this document, you just said that they
16 wouldn't have any of the same duties and
17 responsibilities.
18 MR. WYMER: Objection.
19 Q. (BY MS. RUDICH) And I'm showing you one
20 of the EDS's own documents which say they do,
21 correct?
22 A. According to this document.
23 Q. So so far there's not been a document
24 that I showed you that you've agreed with today,
25 correct?

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1 MR. WYMER: Objection as to form,
2 argumentative. Please answer.
3 Q. (BY MS. RUDICH) Has there been one
4 document that I showed you today that -- one EDS
5 document that I showed you today that you've agreed
6 with what it said, or the portions I asked you
7 about?
8 A. I think what I've disagreed about is
9 your interpretation of what the documents are.
10 Q. I'm asking you what -- I've asked you --
11 I haven't asked you for your interpretation. I've
12 asked you for what the document said. You said --
13 MR. WYMER: Objection, you're
14 arguing with the witness. Pose a question.
15 Q. (BY MS. RUDICH) Has -- has there been a
16 document that I've shown you today in which you've
17 agreed that that's how it works in the real world?
18 A. Pertaining to certain job codes within
19 EDS, no. Pertaining to some job codes, yes.
20 Q. How about pertaining to job families;
21 have you agreed that they're a collection -- do you
22 agree that job family is a collection of jobs that
23 involve similar types of work? Yes or no? It's a
24 yes-or-no question, Mr. Evans. Do you agree with
25 that statement?

17 (Pages 62 to 65)

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1   MR. WYMER: Mike, you can answer --
2   choose your own words to answer. Testify truthfully
3   and answer the question. If it's more than a yes or
4   no, then choose.
5   MS. RUDICH: Stop coaching the
6   witness.
7   MR. WYMER: I'm not --
8   MS. RUDICH: Yes, you are.
9   MR. WYMER: -- telling him how to
10 answer.
11   MS. RUDICH: It's a yes-or-no
12 question.
13   Q.   (BY MS. RUDICH) Do you agree with that
14 statement?
15   A.   Can you reword -- can you please read
16 the question again then?
17   (Record read.)
18   A.   Okay. And it's intended to be.
19   Q.   (BY MS. RUDICH) Now, I'm going to show
20 you -- ask you to look at what's on page 10 of this
21 document.
22   MR. WYMER: Still on the one you
23 didn't mark?
24   MS. RUDICH: Yes -- no, no, no, I'm
25 sorry. I'll take that back. What's been marked as

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1   Evans 3.
2   Q.   (BY MS. RUDICH) Do you see where it
3   says how are jobs defined? Are you on that page?
4   A.   Yes.
5   Q.   And this is a corporate document,
6   correct, Mr. Evans?
7   A.   Yes.
8   Q.   And this is a corporate document that's
9   given to employees teaching them how to train them,
10 correct?
11   A.   I'm not familiar with it, but it appears
12 that was the intended purpose.
13   Q.   Okay. So EDS wasn't in the business of
14 giving documents to its employees that were not
15 true -- were not -- was not in the business of
16 giving training documents to its employees that
17 wasn't accurate, was it?
18   A.   Well, no, that's not -- no. That's
19 correct.
20   Q.   So can you just read me the first
21 sentence, how jobs are defined? Jobs -- is it true
22 that this document says jobs are defined into
23 families and associated work types?
24   A.   Yes.
25   Q.   What does "associated work types" mean?

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1   A.   I think work -- work types -- job codes
2   is how I would interpret that.
3   Q.   And so jobs that are defined into
4   families and associated job codes, correct? Is that
5   would be another way of saying that sentence?
6   A.   That's what I would guess.
7   Q.   Now, I'm going to refer you back to page
8   9 of this document. Do you see where the first
9   sentence it says the job family is a collection of
10 jobs? What is a collection of jobs?
11   A.   State a group, the number of jobs that
12 comprise the job family.
13   Q.   Okay. And what is -- on the next
14 sentence, political functional lines -- particular
15 functional lines, what does that mean?
16   A.   Be lines of progression.
17   Q.   Okay. Now, on the next bullet point, it
18 says job families are designed as a planned
19 progression of work. Do you see that?
20   A.   Yes.
21   Q.   So does particular functional lines mean
22 the same as a planned progression of work?
23   A.   That's how I would read that, yes.
24   Q.   So -- or would particular functional
25 lines means that they all -- that each family --

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1   each job -- each job -- each job within a particular
2   family performs has -- performs the same functions
3   or similar functions?
4   A.   They might be related.
5   Q.   Now, on page 10 where it says service
6   delivery; do you see that?
7   A.   Yes.
8   Q.   So -- so all jobs in this family are --
9   are associated and they do these type of things that
10 are set forth on page 10?
11   A.   Well, they are related to a help desk or
12 a call center type of environment. The functions --
13   Q.   Okay. What about the technical
14 delivery?
15   A.   Means the jobs would be technical in
16 nature.
17   Q.   Okay. And they -- so they're all
18 related by being technical in nature, correct?
19   A.   They would be technical, yes, but the
20 specifics of the technical attributes could be
21 different.
22   Q.   Okay. And they're -- so they're
23 associated work types, correct?
24   A.   Associated from the standpoint that they
25 would be technical in nature.

18 (Pages 66 to 69)

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1   Q.   Okay. Thanks. Now I'm going to point
2   you to page 12 where it's called linkage. And
3   this -- they're using 34200, information analysis,
4   as an example on this EDS corporate document,
5   correct?
6   A.   Correct.
7   Q.   And this EDS corporate document that was
8   given to its own employees to help train them on job
9   coding, correct?
10   A.   Correct.
11   Q.   Okay. Now, what does this page
12 describe?
13   A.   Again, give me a moment to read it
14 because --
15   Q.   Sure.
16   A.   -- I...
17   (Witness reviews document.)
18   A.   It generally describes the correlation
19 between the job code and job family.
20   Q.   (BY MS. RUDICH) Okay. So -- and on the
21 first bullet point on job family, it says that EDS
22 groups jobs of similar nature into similar job
23 families, correct?
24   A.   Yes.
25   Q.   So that -- so this states that every job

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1   in a specific job family is of a similar nature,
2   correct?
3   A.   I don't agree with that. I mean, it
4   states that the EDS job groups, doesn't say every
5   job.
6   Q.   It says groups of jobs of a similar
7   nature into -- EDS groups jobs of a similar nature
8   into job families, correct?
9   A.   That's what it says.
10   Q.   So each job -- each group of jobs that
11 is assigned to a specific job family are similar in
12 nature, correct?
13   A.   It's -- it's similar in nature from --
14 from an industry standpoint.
15   Q.   From an EDS standpoint too, correct?
16 This is an EDS document.
17   A.   Well, yes, it's only applicable to EDS
18 so...
19   Q.   Okay. And this says that every job code
20 has a salary range, correct?
21   A.   Correct.
22   Q.   And that's the same -- and that salary
23 range, and I'm not -- is the same regardless of
24 where a person with -- where people with the same
25 job codes work, meaning you have a highest and a

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1   lowest, correct?
2   A.   That's correct, again, adjusted based on
3   locality.
4   Q.   Right. But isn't that adjustment part
5   of the salary range, though? Isn't that built into
6   the salary range?
7   A.   Yes, it is, but, again, the same job
8   code in Texas will have a different salary range
9   than the same job code in New York.
10   Q.   I understand, but that's -- but my point
11 is that there is -- that's why you have a job range
12 because you have a highest and a lowest, and --
13   A.   Right.
14   Q.   -- within that job range you might have
15 subjob ranges, but there's one uniform job range for
16 each job code throughout the country, correct,
17 overall job range?
18   A.   Yes. Maybe a better way to explain
19 this --
20   Q.   Okay.
21   A.   -- is in locales of the country where
22 the cost of living is higher, it's based on a
23 multiple of the corporate salary range. So there is
24 a standard salary range per job code, but in New
25 York, for example, it will be a multiple of that

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1   standard range.
2   Q.   I understand, but it's the same salary
3   range.
4   A.   Well, it ends up --
5   MR. WYMER: Objection.
6   Q.   (BY MS. RUDICH) It's based on the same
7   salary range.
8   A.   It's -- yes.
9   Q.   Okay.
10   A.   And that's a suggested range, again.
11   Q.   Well, I don't -- it doesn't say here
12 it's a suggested salary range, does it?
13   A.   Well, doesn't say that, but that's what
14 it is.
15   Q.   In it -- okay. It doesn't say this in
16 the training material, does it, that was given to
17 EDS employees, does it?
18   A.   Not in this document.
19   Q.   Okay. Okay. Please look at page 13,
20 job family matrices. What is a job family matrix?
21   A.   That's just another way of saying the
22 lines of progression.
23   Q.   What is a job analysis? I'm sorry.
24 I -- I apologize.
25   Now, it says here that a job code

19 (Pages 70 to 73)

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1 and description is a broad-based for internal use
2 globally across industries and organizations. Do
3 you see that?
4   A.   Yes.
5   Q.   Does this -- does this mean that a job
6 code is -- that a job code is supposed to cover all
7 similarly situated jobs regardless of what industry
8 or location in which that job is located? I'm
9 asking what it says here.
10   A.   Yes. Yes.
11   MS. RUDICH: I'm going to ask that
12 this next document be marked as Evans Exhibit 4.
13 It's a multipage document entitled "Module 2 Job
14 Analysis Basics," EDS (Plaintiffs Group) 0007034 --
15 734 through 7040.
16   (Deposition Exhibit 4 marked.)
17   Q.   (BY MS. RUDICH) Mr. Evans, please
18 review this document.
19   (Witness reviews document.)
20   Q.   (BY MS. RUDICH) Have you reviewed this
21 document, Mr. Evans?
22   A.   Yes.
23   Q.   What is it?
24   A.   Appears to be some instructions or
25 guidance put together by the HR team for managers to

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1 help analyze the positions, their people's
2 positions.
3   Q.   And to help with -- to help with making
4 sure that each position is assigned the proper job
5 code?
6   A.   The -- yes, appears to be that's the
7 intent of it.
8   Q.   Right. And it's dated March 19th, 2007.
9 Do you see that on the bottom of the second page?
10   A.   Yes.
11   Q.   So this is one of the documents that was
12 used within EDS to make sure that each -- everyone
13 doing the same or similar -- everyone who had the
14 same or similar duties were assigned to the -- to
15 their proper job code, correct?
16   A.   I'm not familiar with this document, but
17 that appears to be that's the -- the intent was to
18 give -- I'm not -- you know what, I'm not...
19   Q.   But this is an EDS document, correct?
20   A.   It's an EDS document.
21   Q.   And it was given to its employees at
22 some point, correct?
23   A.   Yes.
24   Q.   What's a job analysis?
25   A.   Appears to be a -- the suggested process

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1 to analyze the job contents.
2   Q.   And to make sure that each job was given
3 the proper job code?
4   A.   Well, this would be a tool to assist in
5 that.
6   Q.   Right. And so -- so a job -- would it
7 be fair to say that a job analysis is performed for
8 consistency so that all jobs with similar duties and
9 responsibilities have the same job code?
10   A.   Part of the intent of getting people
11 properly job coded would require an analysis.
12   Q.   And you say "intent." What do you mean
13 by "part of the intent of getting people properly
14 coded," what does that mean?
15   A.   Well, again, for career reasons, salary
16 reasons, we -- we do try to -- we intend to
17 correctly job code individuals, and this is a tool
18 to help in that.
19   Q.   Are there any other reasons why -- why
20 EDS tried to correctly job code individuals other
21 than for salary reasons and career reasons?
22   A.   It will -- exempt/nonexempt is a
23 byproduct of that also, or could be.
24   Q.   Okay.
25   A.   Again, you could have a miss --

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1 incorrect job codes within a certain -- the exempt
2 classification would not be an issue from an
3 exempt/nonexempt perspective, obviously, but it
4 would be from a career progression and salary
5 analysis.
6   Q.   So one of the other purposes of making
7 sure that people are properly -- have -- that
8 similarly situated people -- I'm sorry. Withdrawn.
9   So one of the purposes to make sure
10 that everyone who -- all employees who were doing
11 the same or similar tasks were properly job coded
12 was to ensure that EDS job -- was to ensure that EDS
13 was in compliance with the FLSA?
14   A.   That assists us in that regard.
15   Q.   So it would be important to make sure
16 that people were given the proper job codes,
17 correct, for that purpose, for the FLSA compliance
18 purpose, correct?
19   A.   It assists us, yes.
20   Q.   What does "assist" mean? I'm having a
21 little trouble. What does "assist" mean?
22   A.   Well, the major disconnect I think we're
23 having is that what actually goes on in the field is
24 a little different than what is being suggested or
25 the intention -- the intended guidelines, and if

20 (Pages 74 to 77)

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1 we're doing an internal review, we would take a
2 first cut at the assigned job codes, but until you
3 do an actual individual analysis on each individual,
4 you don't -- you can't make a determination whether
5 it's a exempt/nonexempt concern, so. It points us
6 in the right direction, but it is just a fraction of
7 the overall review that needs to take place.
8   Q.   So when EDS classified employees as
9 exempt or nonexempt, did they do actual individual
10 analysis for each employee?
11   A.   Yes. Yes.
12   Q.   For every employee?
13   A.   Well, the manager should do that, with
14 some assistance either from my group, if necessary,
15 or corporate compensation or human resources.
16 Again, certain job titles within EDS, the functions
17 of it could change a week after the job code has
18 been assigned. So it's a moving target.
19   Q.   I understand that, but so you're saying
20 that every manager within EDS has -- I know that
21 they -- withdrawn.
22   Is it your testimony today that
23 every manager within EDS has done an actual
24 individual analysis of each individual to ensure
25 that they're properly classified under the FLSA?

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1   A.   They would have to do some level of
2 review to determine what it is that their employees
3 are doing.
4   Q.   Well, that's not my -- my question is is
5 it your -- has every manager within EDS done an
6 actual individual analysis of every employee to
7 ensure that they're properly classified under the
8 FLSA?
9   A.   I can't say every manager has.
10   Q.   Now, you're saying that -- and is it
11 your -- you've also said that not everybody -- that
12 the way job codes work is that everybody who is
13 similarly situated or doing similarly situated work
14 might not have the same job code, correct?
15   A.   No. What I think -- I think what I said
16 was you had people who are in the same job codes who
17 are not similarly situated.
18   Q.   Okay. If they're not similarly
19 situated, does that mean that there's a possibility
20 they're not properly classified under FLSA?
21   A.   That's a possibility, but it's -- again,
22 to go back to my example, it could also be they're
23 in the wrong job code, but they're still in the
24 correct exemption classification.
25   Q.   But how do you know that if they

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1 don't -- how do you know that if -- if -- if what
2 they're supposed to be doing isn't what they're
3 doing?
4   A.   You don't know until you do an
5 individual review.
6   Q.   And when you do the individual review,
7 isn't it true that you then reassign them to the
8 proper job code they belong in?
9   A.   If we find that such a job code change
10 is warranted, yes.
11   Q.   So if you did an individual review -- if
12 managers -- if it's your testimony today that
13 managers did an individual review or should have
14 done an individual review of every employee to
15 ensure that they were properly classified under
16 FLSA, then doesn't it -- isn't it also true that
17 each employee should then be properly classified and
18 be given the proper job code?
19   A.   Well, our managers are not doing FLSA
20 reviews. They are looking at various job
21 descriptions within the job families. The
22 exemptions are built into the job code assignments.
23   Q.   So you mean every -- so that means
24 that -- that every person who was given a specific
25 job code has the same -- is also assigned the same

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1 FLSA exemption regardless of what they're actually
2 doing?
3   A.   What they're actually doing may be
4 different than what their assigned job codes are.
5   Q.   And if that's the case, then they might
6 be -- they might be improperly classified under the
7 FLSA as well, correct?
8   A.   That is one possibility of several,
9 which would mean that there's not a -- another
10 possibility would be, again, that they might be in
11 the wrong job code but they are well within the same
12 exemption.
13   Q.   How do you know that? How would you
14 know that unless you -- how would you know that
15 unless you looked at what they were actually doing?
16   A.   You don't know it until you've done it.
17   Q.   Okay. So if you don't know until you've
18 done it and you're sitting here saying that there
19 are people within job codes that aren't doing what
20 their job -- what their job description says they're
21 supposed to be doing, then it's your testimony that
22 they also -- there's a possibility they could be
23 improperly classified under the FLSA or state wage
24 and overtime laws, correct?
25   A.   There is a possibility. We don't know

21 (Pages 78 to 81)

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1   until we look at them individually, but we haven't
2   looked at everyone individually.
3   Q.   And why not?
4   A.   It's -- I've got just so -- you know,
5   it's -- it's hasn't been warranted.
6   Q.   Hasn't been warranted because people --
7   most people who are given the specific job code are
8   doing the same thing as others within that job code,
9   correct?
10   A.   Well, we have limited resources and a
11   lot of different ways to identify problems, and we
12   focus those resources whenever the concerns have
13   been identified, so...
14   Q.   So instead, EDS takes the position that
15   if you have a specific job code, you're given a
16   specific job code, and that's enough to decide
17   whether a person is exempt or nonexempt under the
18   FLSA or under the state overtime laws?
19   A.   Well, they're given code after a manager
20   has made an assessment of whether the individual
21   will be doing those -- that type of work.
22   Q.   And what do they base the assessment on?
23   How do they know how to perform this assessment,
24   Mr. Evans?
25   A.   Well, they're managing that function.

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1   Q.   But how would they know -- but they have
2   to know which job code to assign to which function,
3   correct?
4   A.   Uh-huh.
5   Q.   And how do they --
6   A.   Yes.
7   Q.   -- know that?
8   A.   They can seek guidance from corporate
9   compensation group or human resource.
10   Q.   And isn't that because specific job
11   codes have -- have a set -- set task or set jobs
12   that they are supposed to be doing?
13   A.   The job codes describe a general variety
14   of functions.
15   Q.   That everybody who are doing those
16   functions -- that everyone who has that job code
17   should be doing the same general functions and
18   duties, correct?
19   A.   Not necessarily.
20   Q.   But then they wouldn't be -- then they
21   shouldn't be assigned that job code, correct?
22   A.   The job code has functions -- several
23   different functions. You might have one -- one
24   employee that gravitates towards one for most of
25   their job, and that could actually make them --

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1   another job code be a better assignment for an
2   individual that does that, for example.
3   Q.   I understand. So then that manager
4   would -- would -- would know that -- to give them a
5   different job code, correct?
6   A.   Yes.
7   Q.   So there's -- so there's -- there's a
8   standard generalized set of job duties and
9   responsibilities within the job code that a manager
10   looks at in order to know which job code to assign
11   to an individual employee, correct? Whether they're
12   doing all of them -- I'm not asking whether they're
13   doing all of them, but I'm saying there is a
14   generalized set of similar duties and
15   responsibilities that each person who are doing
16   those should be having the same job code, correct?
17   MR. WYMER: Object to form. Please
18   answer.
19   A.   That is the intent. Again, based on
20   customer requirements and a host of other things,
21   those functions or requirements can change over
22   time.
23   Q.   (BY MS. RUDICH) And if they change over
24   time, then their job code changes, correct?
25   A.   It should.

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1   Q.   Right, and --
2   A.   And, again, in a perfect world, it
3   should.
4   Q.   And if it doesn't, what does that mean
5   regarding FLSA compliance?
6   A.   Well, it may mean nothing. It may be
7   that they've moved up in status and they have just
8   moved from exempt to a higher exempt, if you will.
9   I mean, there's no such -- you're either exempt or
10   not, but they just change functions from one exempt
11   function to another exempt function, so it would
12   have no impact to FLSA.
13   Q.   But it could have an impact, correct?
14   A.   It could.
15   Q.   So therefore -- withdrawn.
16   All right. So let's look at page
17   17.
18   Do you see where it says job
19   analysis is conducted on the job, not the person
20   doing the job?
21   A.   Yes.
22   Q.   What does that mean?
23   A.   I'm not sure what it means.
24   Q.   Does that mean that you look at the
25   duties and the -- the duties and tasks that a person

22 (Pages 82 to 85)

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1 is performing and not the actual person in order
2 to -- in order to make a job code assignment?
3   A.   I'm not sure what that means because
4 that's not the guidance that we would typically give
5 on a job analysis.
6   Q.   Okay. Let's look at the next page,
7 purpose of job analysis. Do you see the third
8 bullet point where it says, provides an objective
9 basis for hiring, evaluating, training, promoting,
10 and determined -- determining salary?
11   A.   Yes, ma'am.
12   Q.   Does this mean that EDS wanted to ensure
13 that all employees with the same job codes did the
14 same things on a companywide basis?
15   A.   It means that a job analysis would be
16 helpful in your overall employment process. That's
17 the way I read this.
18   Q.   Including -- including that all
19 employees with the same job codes did similar things
20 on a companywide basis, correct?
21   A.   Well, that would be the intention, yes.
22   Q.   Are you -- are you sitting here
23 saying -- here today saying that EDS failed in their
24 intention?
25   A.   To have everybody properly classified?

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1   Q.   Not everybody, but the majority of its
2 employees properly classified -- given the proper
3 job code.
4   A.   No. I am not saying that we -- that --
5 as a majority. There are pockets.
6   Q.   Isolated pockets, correct?
7   A.   There have been.
8   Q.   There have been.
9   A.   Yes.
10   Q.   But on the most part, all employees with
11 the same job codes do similar things on a
12 companywide basis. I'm just saying on the most
13 part.
14   A.   I'm not comfortable saying that.
15   Q.   Well --
16   A.   There are certain job groups -- excuse
17 me, certain job codes where you cannot make that
18 assessment without an individual -- an individual
19 review of each individual.
20   Q.   And for -- and for those job codes, has
21 EDS done an individual review of each -- an
22 individual assessment?
23   A.   Of all of them?
24   Q.   Yes.
25   A.   No.

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1   Q.   Why not?
2   A.   It's -- it's a moving target, for one
3 thing. We do handle these issues when we're made
4 aware of them, so we -- we do tackle them when we're
5 made aware of them.
6   Q.   What job codes are these?
7   A.   I would say the higher end of what I
8 call technical professionals, such as the
9 infrastructure jobs. It's very difficult to get a
10 handle on what those folks do. That's primarily
11 that infrastructure job family.
12   Q.   But they are -- but these people are
13 assigned a job code, correct?
14   A.   Correct.
15   Q.   And presumably this job code was given
16 to them because they did similar things as others
17 with that job code did, correct?
18   A.   They were assigned job codes based on
19 the job codes that were available at the time.
20   Q.   Right, because they did similar work to
21 what others within that job code did at the time.
22   A.   They were intended to try to the best
23 they could represent the job that these folks were
24 doing.
25   Q.   Okay. And does that mean that there's a

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1 large -- that there's a possibility that a large
2 percentage of people with this job code are
3 improperly classified under the FLSA?
4   A.   I wouldn't -- I would -- no.
5   Q.   But there's -- but there's a -- I'm
6 trying to understand how it could be that they're
7 not improperly classified under the FLSA but yet
8 they don't -- they might not have the proper job
9 code.
10   A.   For these individuals, the people that
11 we're talking about, if they're coded incorrectly,
12 it would be because they should be in another exempt
13 job code.
14   Q.   Within that job family?
15   A.   It could be. It may not be.
16   Q.   But how do you know that unless you do
17 an individualized assessment?
18   A.   You don't. You don't know.
19   Q.   So that just -- there's as much a
20 possibility that they're -- that they're improperly
21 classified under the FLSA as -- so there's just as
22 much of a possibility that these people are
23 improperly classified under the FLSA as it is that
24 they have an improper job code, correct?
25   A.   That's incorrect.

23 (Pages 86 to 89)

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1   Q.   Why?
2   A.   Because these are high -- the people
3 that we're talking about, by and large, are high
4 end, doing some of the most complex technical
5 functions of the company. The chance that they
6 might be misclassified from an exempt perspective,
7 I...
8   Q.   How do you know that unless you do an
9 individualized assessment?
10   A.   Because I've been doing this job for a
11 long time, and over the course of this time, I've
12 had the experience of doing just what you're saying.
13 We have evaluated certain groups of people, and that
14 has been my general experience.
15   Q.   But if -- so if you've been doing this
16 for a long time, you would also know whether or not
17 they're in the proper job code, correct?
18   A.   You lost me there.
19   Q.   You said you've been doing this for a
20 long time, so you could tell if someone is properly
21 classified as exempt or nonexempt, correct?
22   A.   Correct.
23   Q.   But -- so isn't it also true, since
24 you've been doing this for a long time, you would be
25 able to tell whether they have been assigned to the

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1 proper job code?
2   A.   Once you do an individual analysis, yes.
3   Q.   Now, when you say that people -- that --
4 now I'm going to show you what's been marked as --
5 I'm sorry. Go down the same page where it says
6 supports job code matching.
7   MR. WYMER: Still on page 18, Fran?
8   MS. RUDICH: Page 18, right.
9   Q.   (BY MS. RUDICH) Does this mean that one
10 of the purposes of an EDS job analysis is to make
11 sure that everybody -- that everybody having similar
12 duties and responsibilities had the same job code?
13   A.   Well, it's the intent to try to match up
14 an individual with a job code.
15   Q.   You keep saying intent, and I don't
16 understand what that means, intent. Are you saying
17 that EDS is not -- is not -- is not fulfilling the
18 intent, it's not doing what it intends to do?
19   A.   What I'm saying, of course this is how
20 we pay individuals is on the job code they're
21 assigned to. Of course we would try to accurately
22 code these individuals. That's our intent. That's
23 the guidance that we give. The reality often is
24 much different than what we're -- we're -- we're
25 suggesting is -- is that they -- they should do.

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1   Q.   So it's your -- it's your -- it's your
2 testimony that EDS has a corporate policy of
3 ensuring that all job codes within the same job
4 family had similar duties and responsibilities, but
5 the practice may deviate from the policy, correct?
6   A.   Well, I don't know if we have a policy
7 per se. It is the practice to -- to -- to the
8 extent we can, correctly job code individuals.
9   Q.   But isn't it -- isn't the policy set
10 forth in EDS's own documents?
11   A.   Well, this isn't a policy. It's a
12 guideline.
13   Q.   Okay. So are you saying that it's
14 IDS's -- EDS's guidelines is to have all its
15 employees -- is to ensure all job codes within the
16 same job families had similar duties and
17 responsibilities, correct?
18   A.   It is our intent to try to do that. Why
19 would we train somebody to --
20   Q.   Exactly.
21   A.   Right. The reality is often, for
22 certain job codes, much different than what the
23 intended...
24   Q.   Okay. I'm going to ask you to just look
25 at page 16. Do you see where it says, what is a

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1 job?
2   A.   Yes.
3   Q.   And do you see the first box where it
4 says, a homogenous cluster of work tasks whose
5 completion serves an enduring purpose for the
6 organization?
7   A.   Yes.
8   Q.   What does "homogenous" mean in that
9 sentence?
10   A.   I assume similar.
11   Q.   Okay.
12   MS. RUDICH: I'm going to ask that
13 this next document be marked as Evans Exhibit 5.
14 It's a multipage document with -- entitled "Module
15 3, Conducting Job Code Reviews," EDS (Plaintiffs
16 Group) 0007041, 7043 --
17   MR. WYMER: Fran, before you
18 distribute that, before he has a chance to look at
19 it, can we take a break?
20   MS. RUDICH: Sure.
21   (Recess held.)
22   (Deposition Exhibit 5 marked.)
23   Q.   (BY MS. RUDICH) Okay. I'm marking
24 Evans Exhibit 5. It's a multipage document entitled
25 "Module 3, Conducting Job Code Reviews," EDS

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1 (Plaintiffs Group) 0007041, 7042, 7043, 7044, 7045,
2 7046, 7047, and 7048. Please review that document,
3 Mr. Evans.
4   A.   Uh-huh.
5   (Witness reviews document.)
6   A.   Okay.
7   Q.   (BY MS. RUDICH) Mr. Evans, I have one
8 question. Is it true that when an employee is
9 assigned a job code that -- withdrawn.
10   Before an employee is assigned a job
11 code, does anybody in corporate have to approve of
12 the giving of that job code?
13   A.   That particular job code?
14   Q.   Yeah, for any employee.
15   A.   It's not a corporate practice per se,
16 but --
17   Q.   Why don't you describe what happens when
18 a new employee comes in and a job code is assigned,
19 from, let's say, 2000 until HP took over. What
20 would happen?
21   A.   To the point where a manager has already
22 decided which job code they want?
23   Q.   No, a new employee is hired. Describe
24 to me how he gets a job code -- he or she gets a job
25 code.

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1   A.   It would be up to each individual
2 manager how they go about it. Some organizations
3 require HR approval, some require senior leader
4 approval. Depending on the particular job code,
5 there may be a restricted code that requires even
6 another group's approval. Other managers have the
7 discretion to go in and pick the job code they want
8 and assign it.
9   Q.   What's a restricted job code?
10   A.   For example, some of our government
11 accounts have job codes that require a high level of
12 security, so before that code can be used, we -- it
13 goes through an approval process to make sure the
14 person has the required security.
15   Q.   You said "some organizations require HR
16 approval." What do you mean by "organizations"?
17   A.   Accounts, departments, General Motors
18 account, for example, may say anybody within the
19 General Motors organization -- not saying that they
20 do, this is just an example, but before you can
21 assign a job code, it requires HR approval.
22   Q.   But don't -- but don't -- but don't the
23 individual managers have to pick within a corporate
24 provided job codes? They don't just make -- they
25 don't just pick numbers out of the air. These are

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1 corporate provided job codes, correct?
2   A.   That's correct.
3   Q.   Now, I'm going to -- let's look at
4 what's been marked as Evans 5. Do you see where it
5 says implications of incorrect job coding, first
6 page, top bullet point. Risk of noncompliance with
7 labor laws and regulations, module 3.
8   MR. WYMER: Yeah, the first page of
9 Mike's exhibit --
10   MS. RUDICH: Oh, it's missing --
11   MR. WYMER: -- is job code review
12 overview, looks like the --
13   MS. RUDICH: It's missing a page.
14   MR. WYMER: Which looks like it's
15 missing the page you're about to ask him about.
16 Page --
17   MS. RUDICH: Why don't you switch.
18   MR. WYMER: I'm going to have to
19 correct the exhibit. Can we put the sticker on
20 mine, and I'll share yours.
21   (Deposition Exhibit 5 re-marked.)
22   THE WITNESS: Can I have a chance to
23 read it?
24   MS. RUDICH: Yeah, just the one, I
25 hope.

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1   THE WITNESS: Yeah.
2   (Witness reviews document.)
3   A.   Okay.
4   Q.   (BY MS. RUDICH) Do you see the first
5 bullet point where it says, risk of non --
6 implications of incorrect job coding, risk of
7 noncompliance with labor laws and regulations?
8   A.   Yes, ma'am.
9   Q.   What does that mean?
10   A.   What I assume it means is that if the --
11 if we have individuals coded as exempt and they are
12 nonexempt, then it could be a concern from a -- from
13 an overtime perspective.
14   Q.   Let's look at the next page where it
15 says a job code review overview, and this is an EDS
16 document, correct?
17   A.   Yes.
18   Q.   It's an EDS guideline, correct, or is it
19 an EDS policy?
20   A.   It's not a policy. It may be a
21 guideline. It's -- I haven't seen it.
22   Q.   But it's an EDS document?
23   A.   It's an EDS document, appears to be.
24   Q.   And -- and who drafted it?
25   A.   The US HR team, appears.

25 (Pages 94 to 97)

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1   Q.   US HR team, is that -- is that a current
2   department within HR?
3   A.   It's not a current, no. This --
4   Q.   In March -- oh, I'm sorry.
5   A.   It would have been back in March of '07.
6   Q.   And who -- do you know who was -- who
7   was -- what individual -- can you name the
8   individuals that were on the US HR team in March of
9   2007?
10   A.   I know some individuals in HR. Whether
11 they had anything to do with the production of this
12 document, I don't know.
13   Q.   My question was can you -- do you know
14 the names of any individuals who were on the US HR
15 team in March of 2007?
16   A.   Yes.
17   Q.   And can you give me their names?
18   A.   Yes.
19   Q.   What are they?
20   A.   Let's see, Marcella Zapata, Colleen
21 Parker. These are just human resource generalists
22 that would have had nothing to do with this.
23   Q.   Do you know any -- any HR employees that
24 you believe might have had something to do with
25 what's been marked as Evans Exhibit 5?

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1   A.   No. As I said, I haven't seen this.
2   I --
3   Q.   All right.
4   A.   I don't --
5   Q.   In March of 2007, do you know who in HR
6   handled job code reviews or job code issues?
7   A.   From an exempt/nonexempt perspective, it
8   would have only been my group. I don't know who
9   would have done this.
10   Q.   I'm not asking who would have done this.
11 My question is, do you know who within the HR team
12 in March of 2007 handled --
13   A.   No --
14   Q.   -- job -- handled issues relating to the
15 proper job -- giving employees the proper job code
16 or job code reviews or training employees on how to
17 give job -- how to assign job codes?
18   A.   I don't recall, but it would have
19 resided in the HR organization. I don't recall -- I
20 wouldn't know who the names are of the people
21 because it's not really related to my area.
22   Q.   Did you ever talk to them and -- did you
23 ever talk to anybody in HR and tell them that it's
24 been your experience that people -- that people have
25 not been assigned the proper job codes?

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1   A.   Yes.
2   Q.   Who did you speak with?
3   A.   Colleen Huff is one, Julie Ferraro would
4   be another, Nick Vendetelli would be another.
5   What's her name? Shelly Smith is one.
6   Q.   And how often did you speak with Colleen
7   Huff about the fact that you were finding that
8   people in the field aren't going -- aren't being
9   assigned the proper job codes?
10   A.   Most of my conversations with Colleen
11 and Julie, as a matter of fact, were during the
12 course of an internal review that we did to correct
13 these job codes.
14   Q.   And when -- what -- what -- when did you
15 do this review?
16   A.   We began it in the latter part of 2006
17 and completed it, for the most part, toward the end
18 of 2008.
19   Q.   And what -- what -- what job codes did
20 you audit?
21   A.   System administrator and system
22 administrator advanced.
23   Q.   And why did you perform an audit for
24 those particular job codes?
25   A.   We were approached in the latter part of

101

1   2006 by a -- actually, the managers went to the HR
2   person who came to us. It was an organization
3   called Global Field Services. They had asked the HR
4   group for some assistance because they had people
5   coded -- they had people doing different functions
6   within the same job codes, and so we did -- we
7   started looking into this, and I had reached out to
8   the Department of Labor. We voluntarily did this
9   internal review under -- under their guidance, and
10 as a result, we -- and as a result, we -- we
11 analyzed individuals that were part of this
12 organization and a future organization that they
13 reorganized into, and again, during the course of
14 this investigation, we were dealing with the --
15 Julie and Colleen because they were the HR reps.
16   Q.   So -- so after this job code review had
17 been completed, is it -- was everybody who -- who
18 was -- so was employees with the job title -- what
19 was the -- systems infrastructure -- what were the
20 titles of the --
21   A.   System administrator and system
22 administrator advanced.
23   Q.   Was everybody with those two titles
24 properly -- everybody who was given those two titles
25 and had those job codes, were they doing similar --

26 (Pages 98 to 101)

102

1   did they have similar duties and responsibilities?
2   A.   All of them? Was that your question,
3   were all of them?
4   Q.   Well, you did a job review of these --
5   A.   No, we found that quite a few of them
6   were doing nonexempt work.
7   Q.   And did you -- did you --
8   A.   We reclassified them and paid them back
9   overtime.
10   Q.   And you gave them different job codes,
11   correct?
12   A.   That's correct.
13   Q.   So at the end of this job code review
14   where all that was done and the people were given
15   different job codes and they were reclassified and
16   it was all over, is it -- was it -- at that point,
17   was every -- did you believe that people who had had
18   the job title systems administrator or systems
19   administrator advanced were all doing the same or
20   similar functions?
21   A.   No. We were only looking at -- my group
22   was only looking at it from an exempt/nonexempt
23   determination; the corporate compensation group was
24   the group that decided which job code they should
25   fall into.

103

1   Q.   And did they -- were they part of this
2   review?
3   A.   Yes.
4   Q.   And who was -- who was in the corporate
5   compensation team or department, group?
6   A.   Jennifer Miner.
7   Q.   Anyone else?
8   A.   She -- she managed the group.
9   Q.   Is she --
10   A.   She was my primary contact.
11   Q.   Is she a current HP employee?
12   A.   Yes.
13   Q.   And during the time that you performed
14   your review regarding exempt/nonexempt, was she also
15   performing a review to make sure that the people had
16   the proper job codes?
17   A.   Yes. She would provide guidance to the
18   managers who weren't quite sure exactly which job
19   code the people should -- their people should be
20   coded into.
21   Q.   Okay. Now, let's go back to page 24 of
22   Exhibit 5, which is the job code review overview.
23   A.   Uh-huh.
24   Q.   Now, do you see the third bullet point
25   where it says, accurate job coding involves matching

104

1   duties and responsibilities performed to those
2   highlighted in the appropriate job description. A
3   job code description should match between 60 and 80
4   percent to an individual's duties and
5   responsibilities before it is considered a match.
6   Do you see that?
7   A.   Yes.
8   Q.   And this was an EDS document given to
9   its employees, correct?
10   A.   It's an EDS document. Again, I'm not
11   familiar with it. I don't -- I don't know who
12   developed it or what the use of this was.
13   Q.   So but it was made available to EDS
14   employees, correct?
15   A.   I -- it appears to be an EDS document.
16   I don't know who --
17   Q.   Okay. What does it mean that a job code
18   description should match between 60 and 80 percent
19   to an individual's duties and responsibilities?
20   A.   I -- that's what it says. I don't know
21   what they mean by it because that's not part of my
22   analysis job.
23   Q.   And this is a companywide document,
24   correct? It's not -- it's not specific to -- it
25   doesn't appear to be specific to any individual

105

1   client or geographic location?
2   MR. WYMER: Objection as to form.
3   Please answer.
4   A.   I mean, it does not appear to be
5   specific to any particular account.
6   MS. RUDICH: I'm going to ask that
7   this next document be marked as Evans Exhibit 6.
8   It's a multipage document entitled "Module 4,
9   Selecting the Appropriate EDS Job Code," EDS
10   (Plaintiffs Group) 0007049.
11   (Deposition Exhibit 6 marked.)
12   (Witness reviews document.)
13   Q.   (BY MS. RUDICH) Why don't I have --
14   just take a look at page 31 and 32.
15   A.   Okay.
16   Q.   That might help.
17   (Witness reviews document.)
18   A.   Okay.
19   Q.   (BY MS. RUDICH) Okay. Do you see on
20   page 31 of this document Bates stamped number
21   0007050 where it says -- the first bullet point,
22   where the duties and responsibilities of the
23   position for which an individual is being hired or
24   being promoted to should be compared with the job
25   description?

106

1   A.   I see that.
2   Q.   And why is that, why should the duties
3 and responsibilities of the position for which an
4 employee -- an employee is being hired or being
5 promoted to, why is it important to compare that to
6 the job description?
7   A.   Because, again, our intent is to
8 match -- match an employee to the closest fitting
9 job title.
10   Q.   And then the next bullet point is to
11 strive for at least 80 percent match between the job
12 code description and the employees duties and
13 responsibilities?
14   A.   Yes. Was that a question?
15   Q.   Yes, why -- what does that mean?
16   A.   I -- it -- I don't know. It appears --
17   Q.   Okay.
18   A.   I don't know.
19   Q.   Okay. I'm going to ask you for the next
20 page, page 32, where it says --
21   MS. RUDICH: It's only 12:00
22 o'clock. I know we're all on East Coast time. I
23 know.
24   MR. WYMER: We've driving around
25 North Texas looking for this darn hotel. Whenever

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1 is convenient.
2   MS. RUDICH: Sure, after this
3 document.
4   Q.   (BY MS. RUDICH) Do you see the next
5 page where it says job code collection?
6   A.   Yes, ma'am.
7   Q.   Now, getting the exemption status right
8 is the first and most important step. Do you see
9 that?
10   A.   Yes, ma'am.
11   Q.   Does that mean that getting the job code
12 selection correct is -- is that the most -- that the
13 first step in getting the job code selection correct
14 is to get the exemption status, correct?
15   A.   Yes. It's -- I would agree from my --
16 my line of thinking, yes.
17   Q.   So that when you testified earlier that
18 a lot of the job codes might not be correct, that
19 also means that the exemption status might not be
20 correct?
21   MR. WYMER: Objection as to form.
22   Q.   (BY MS. RUDICH) Correct?
23   A.   An incorrect job code may carry a
24 incorrect exemption status, but it also may not.
25   Q.   Okay. When you go back to the 80

108

1 percent -- no.
2   MS. RUDICH: All right. We could
3 break for lunch now. Oh, wait. Wait, one second.
4   Okay. Let's break for lunch.
5   (Lunch recess held.)
6   Q.   (BY MS. RUDICH) Okay.
7   MR. WYMER: Fran, if we may, before
8 we start, I want to remove any possible ambiguity.
9 Towards -- a little ways into the deposition, you
10 said you reserve rights on -- on things related to
11 the merits. So I could be clear on our position, we
12 got a 30(b)(6) deposition notice. We offered up
13 Mike to appear on 10 or so subjects designated in
14 the notice. We barely touched on those subjects
15 this morning, and obviously that's your choice, what
16 you want to cover in deposition, and we haven't
17 fought with you on whether or not -- I mean, Mike
18 should testify about that, he's speaking as a fact
19 witness on subjects not on the list, but it is our
20 position that we will not reproduce Mike on the
21 30(b)(6) subjects. We didn't send the notice.
22 Whether you --
23   MS. RUDICH: That's fine. We
24 could -- we could argue --
25   MR. WYMER: But what I don't want to

109

1 do is then argue later when we have had all
2 afternoon. You have, if you choose, to discuss with
3 Mike the subjects on which he's appearing pursuant
4 to the 30(b)(6) notice. And it's our position that
5 if you choose not to do that, then we don't -- that
6 we would ask the court to prohibit him to having to
7 reappear.
8   MS. RUDICH: And it's my position
9 that anything in that 30(b)(6) notice which was
10 served was only related to the issue of class
11 certification and/or 216 B certification, so within
12 that context. It was not in the context of anything
13 to do with merits, and that was what the court --
14 that's what our discovery order says, and that's
15 what the court believes that this phase of discovery
16 is about.
17   MR. WYMER: But you guys issued the
18 30(b)(6) notice.
19   MS. RUDICH: And in that context,
20 because we were in --
21   MR. WYMER: Okay. Well, within the
22 context of certification, one of your subjects was
23 fluctuating work weeks. Within the context of
24 certification, one of your subjects was good faith
25 efforts to comply.

28 (Pages 106 to 109)

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1   MS. RUDICH: Right.
2   MR. WYMER: Mike is appearing as the
3   30(b)(6) witness on the subjects that we indicate to
4   you in our August email he was appearing on, and it
5   is our position that, absent a court order, we're
6   not going to produce him at a later time on those
7   subjects.
8   MS. RUDICH: Okay. That's fine.
9   We -- I'm not saying that's fine. I'm saying that
10 we could -- we could debate that or have to go to
11 the judge on that, but let's -- I understand your
12 position, you understand mine, and obviously it
13 might be an issue for the judge to decide.
14   MR. WYMER: Got it.
15   MS. RUDICH: Okay.
16 Q.   (BY MS. RUDICH) Did I --
17   MS. RUDICH: I'm going to ask that
18 this next document be marked as Evans Exhibit 7.
19 It's a multipage document entitled EDS -- I'm sorry,
20 entitled "Service Delivery Job Family,
21 Telecommunications Competency Based Matrix,
22 Individual Performer," EDS (Plaintiffs Group)
23 0001161, 1162, 1163, 1170, 1171, and 1172.
24   (Deposition Exhibit 7 marked.)
25   MS. ANSELMO: Do you have another

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1   one of those?
2   MS. RUDICH: No, I don't.
3   (Witness reviews document.)
4   Q.   (BY MS. RUDICH) Okay. Mr. Evans, have
5   you ever seen this document before?
6   A.   No. No, ma'am.
7   Q.   Okay. Okay. I'm going to ask you to
8   look at -- all right. How about on -- look on page
9   10.
10 A.   Okay.
11 Q.   Have you ever seen these job
12 descriptions?
13 A.   Yes.
14 Q.   Okay. And are these job descriptions
15 applicable for all these job codes throughout the
16 country?
17   MR. WYMER: Objection as to form.
18   MS. RUDICH: Okay.
19   MR. WYMER: Please answer.
20 Q.   (BY MS. RUDICH) Meaning that for every
21 employee throughout the country, every EDS employee
22 throughout the country who has a job code of 34500,
23 this is the job -- this is the job code description
24 that's applicable to him, correct?
25 A.   To the job code --

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1   Q.   Yes.
2   A.   -- it would be.
3   Q.   Okay.
4   A.   It may or may not be representative --
5   Q.   I understand.
6   A.   Well --
7   Q.   But it's --
8   A.   But, if I may, it may or may not be
9   representative of the actual functions that you're
10 performing.
11 Q.   No, I understand, but this actual job
12 code description is applicable to all employees with
13 the job codes 51000, 51010, 3400 -- or 34500, 34510,
14 and 34520 throughout the country?
15 A.   That is the description for that
16 numerical job code.
17 Q.   Okay. Now, is this what the employees
18 having these job codes are expected to do or -- I'm
19 sorry, are generally expected to do?
20 A.   It differs per account. For example,
21 you'll notice that there are several different
22 functions specified under each job description. One
23 account may require an emphasis on a certain
24 function and another account may not. So it's
25 really -- again, goes back on individual analysis.

113

1   Q.   But it's the same -- but -- but -- but
2   employees -- isn't this what employees having these
3   job codes are generally expected to do, some or all
4   of these tasks set forth herein?
5   A.   You would hope, before an employee is
6   assigned this code, that they are performing some of
7   these functions, but again, you know, based on
8   customer requirements, it's -- it may change over
9   time.
10 Q.   And if they're not performing at least
11 some of these job tasks or responsibilities, could
12 that impact on whether they're properly classified
13 as exempt or nonexempt?
14 A.   Yes.
15 Q.   Now, isn't the job code -- isn't -- now,
16 for every employee that has the job code 34500 or
17 34510 or 34520, isn't this the job code that is used
18 in connection with their performance evaluation?
19 A.   Yes.
20 Q.   And that's for every employee that has
21 that job code, correct?
22 A.   Yes.
23 Q.   And if --
24 A.   I'm sorry. I will say this, that during
25 the performance evaluation, a manager may have other

29 (Pages 110 to 113)

114

1 types of evaluation criteria, again based on the
2 particular customer or specific responsibility the
3 employee may have.
4   Q.   I understand, but I'm just asking about
5 this job code as used in connection with an
6 employee's performance evaluation.
7   A.   I understand, but I just wanted to
8 clarify that their job performance won't be based
9 strictly on that job description.
10   Q.   I understand, but I asked if this was
11 the job code that was used in connection -- is this
12 the job code description that's used in connection
13 with the job performance?
14   A.   If that's the job code they were
15 assigned to, yes.
16   Q.   And it doesn't matter whether they're
17 located --
18   A.   Right.
19   Q.   -- throughout the country?
20   A.   Correct.
21   Q.   Doesn't matter which client that they
22 work in.
23   A.   Correct.
24   Q.   Okay. And it's -- and -- and it's the
25 same job code description that's put in -- for every

115

1 employee that's assigned a specific job code, let's
2 say 5101, 34500, the same job code is put into their
3 personnel file regardless of where they work,
4 correct?
5   A.   Well, they don't have personnel files,
6 so I mean...
7   Q.   Now, does -- now, do you see that there
8 is a number of job code descriptions listed in the
9 service delivery job family, telecommunications
10 competency based matrix? There is one, two, three,
11 four, five. Do you see that it's 51000, 51010 --
12   A.   So you're looking at page 12 or --
13   Q.   I'm looking at page --
14   MR. WYMER: 10 and 11.
15   Q.   (BY MS. RUDICH) -- 10 and 11.
16   A.   Oh, okay. Yes, I see them.
17   Q.   Now, do these job codes all have
18 similar -- all have similar duties and
19 responsibilities? I'm not saying the same; I'm
20 saying similar.
21   A.   There may be certain aspects of the job
22 that overlap in some regard.
23   Q.   And that's why they're in the same -- is
24 that why they're all assigned to the same job
25 family?

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1   A.   I -- that may explain the job family,
2 but if they were that similar, they would just be
3 all consolidated in one job code.
4   Q.   And earlier in Exhibit 1 and 2, and I
5 could show you those, but earlier in Exhibit 1 and
6 2, EDS defined job family as a group of jobs
7 relating to same nature of work and having similar
8 duties and responsibilities, correct? You could
9 look at the document if you need to.
10   MR. WYMER: Objection as to form.
11 Okay.
12   A.   I'm sorry. Would you repeat the
13 question?
14   (Record read.)
15   A.   I didn't say that, did I?
16   Q.   (BY MS. RUDICH) No, I said EDS defined
17 it.
18   A.   Oh, okay. Yes. Okay. In the document,
19 yes.
20   Q.   Now, consistent with EDS's own
21 documents, jobs must relate to the -- all jobs
22 within the same job family must relate to the same
23 nature of work, correct?
24   A.   Depends on how you define nature of
25 work. Telecommunication job family, for example,

117

1 you could draw the conclusion that all of these jobs
2 are somehow related to telecommunications. You
3 can't draw a conclusion that the functional
4 responsibility of each one of these are going to
5 have similarities.
6   Q.   And why would they all -- if these -- if
7 the -- if the job codes contained in the
8 telecommunications job family do not have similar
9 functional responsibilities, why would they be in
10 the same job family?
11   A.   They are similar in -- from the aspect
12 that they're all related to a telecommunications
13 type responsibility.
14   Q.   Right. So EDS itself thought that
15 these -- that all the job codes contained within the
16 telecommunications job family were similar enough to
17 put them in the same job family, correct?
18   A.   Well, as they relate to a -- a general
19 telecommunications type role.
20   Q.   Well, and what do you mean by that?
21   A.   Maybe -- I'm trying to think of a better
22 example. All of these jobs are related to tele --
23 to a telecommunication type function. Within that
24 function, there are specific job responsibilities
25 that could differ greatly between the

30 (Pages 114 to 117)

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1   telecommunication technician, for example, and the
2   telecommunication analyst senior.
3   Q.   I understand.
4   A.   So to assume that those are somehow
5   related or similarly situated just because they're
6   in the job family, same job family, is an incorrect
7   assessment.
8   Q.   But EDS itself told its employees
9   that -- that jobs -- that a job family is a group of
10   jobs relating to the same nature of work and having
11   similar duties and responsibilities, correct? This
12   is EDS's own words to its employees, correct?
13   MR. WYMER: Objection, asked and
14   answered 14 times.
15   A.   If that's what was stated in the
16   document?
17   Q.   (BY MS. RUDICH) Yes. And you were
18   saying that that's -- that might not be the
19   situation in the telecommunications job code family.
20   A.   I think you're -- yes. You are breaking
21   it down -- job codes and job families are not the
22   same thing, and they're -- they are related from the
23   standpoint that they have a higher common --
24   commonality, but when you break it down to a
25   functional overview, they are -- they could be quite

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1   different.
2   Q.   Okay. But what about, 34500,
3   telecommunications analyst, and 34510,
4   telecommunications analyst advanced, are those -- do
5   those -- do they have similar duties and
6   responsibilities?
7   A.   There will be some overlapping.
8   Q.   And what about for 34510 and 34520; do
9   they have similar -- do they have similar duties and
10   responsibilities?
11   A.   There would be some overlapping between
12   those two, also.
13   Q.   And there would be more in common
14   between 34 -- between the 34500 and 34510 than
15   between 5100 and 34520, correct?
16   A.   Generally speaking, yes.
17   Q.   So the closer the number is, the more
18   they have in common?
19   A.   That's generally correct. Again,
20   based --
21   Q.   I'm talking general -- I understand that
22   there's -- that -- that there might be, you know,
23   specifics that don't apply, but I'm talking about in
24   general; is that correct?
25   A.   That's in general, correct.

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1   Q.   Okay. Now, I'm going to ask you about
2   telecommunications analyst on page 10, 34500. Is
3   this an accurate recitation of the duties and
4   responsibilities of telecommunications analysts?
5   A.   For whom?
6   Q.   For anyone with that job code.
7   A.   You can't -- I couldn't answer that
8   unless you identify the individuals you're talking
9   about.
10   Q.   So the -- so there might be an
11   individual who has this job code 34500 that
12   should -- that should not be classified -- should
13   not be -- should not have that job code, correct?
14   A.   That's -- it's a possibility.
15   Q.   And it's possible that there are other
16   telecommunications analysts in EDS that should have
17   had the job code 51010, correct?
18   A.   Yes, but -- correct, but it's also just
19   as -- as equally plausible that they should be in a
20   34520.
21   Q.   I understand that, but that they should
22   have 51010, correct?
23   A.   That is --
24   Q.   It's possible.
25   A.   That is one of the several

121

1   possibilities.
2   Q.   If they don't do -- if they don't all
3   have the same -- if everybody within EDS who has the
4   job code 34500 doesn't do any or all of these duties
5   and responsibilities set forth in this job
6   description, it's possible that means that he
7   might -- they might do -- they might be
8   misclassified, correct?
9   A.   That's -- yes, that's correct.
10   Q.   So you can't say that anybody with
11   345 -- that everybody who has 34500 was properly
12   classified as exempt, correct?
13   A.   No, that would be incorrect. If they
14   were doing these functions and coded as a 34500,
15   they would be exempt.
16   Q.   So everybody who is doing these same
17   functions should be coded as 34500, correct?
18   A.   Correct.
19   Q.   And if they're not, because you
20   testified that there's a chance that -- that they
21   might not be doing these functions, correct?
22   A.   Correct.
23   Q.   And there could be employees out there
24   in EDS that aren't doing these functions but yet are
25   coded with 34500, correct?

31 (Pages 118 to 121)

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1   A.   That's correct.
2   Q.   And it's a possible that they might be
3   doing nonexempt tasks, correct?
4   A.   That's correct.
5   Q.   And that they're improperly coded.
6   A.   There is also a possibility that they
7   are doing -- yes, but you're posing the question as
8   if that's the only possibility.
9   Q.   No, I'm not. I'm asking you if that's a
10 possibility.
11   A.   That is a possibility of a number of
12 possibilities.
13   Q.   You're not answering my question.
14   A.   Yes, it is a possibility.
15   Q.   It's a possibility, and therefore you
16 can't state that everybody who has -- who has the
17 job code 34500 should be classified as exempt under
18 the FLSA, correct?
19   A.   Correct.
20   Q.   And you can't state that everybody who
21 has the job code -- who is given the job code 34510
22 should be classified as exempt, correct?
23   A.   What I said, to clarify, if they are
24 doing the functions described here under the
25 numerical job code, they would be exempt.

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1   Q.   And that means that if they're -- so
2   that everybody who is doing the similar tasks --
3   similar tasks or similar functions should be
4   classified as exempt, correct?
5   A.   That's not what I said.
6   Q.   Everybody who is doing the same -- the
7   similar tasks or similar job functions as set forth
8   in this document under the 34510 should be
9   classified as exempt, correct?
10   A.   If they are doing these functions, they
11 are exempt. If they're --
12   Q.   So everybody who is doing these
13 functions are similarly situated, correct?
14   A.   Not --
15   Q.   Who is doing these functions, I mean.
16 Not -- they might not be doing these functions, but
17 everybody who is doing these functions are similarly
18 situated, right?
19   A.   You would need to look at them on an
20 individual basis. There may be some overlap of
21 which they are doing a small percentage of overlap,
22 which it wouldn't affect the exemption status.
23   Q.   I'm not talking about exemption status.
24 I'm just talking about if they are similarly
25 situated in terms of that they all have the same

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1   core duties and responsibilities, if they are
2   properly classified under 34510, then they're doing
3   the same or similar job -- core functions of job
4   responsibilities, correct?
5   A.   And -- yes, correct.
6   Q.   And it's the same for 34520, correct?
7   A.   Correct.
8   Q.   Now, everybody who is -- is everybody
9   who has a job code 34500 subject to the same policy
10 or practice regarding overtime?
11   A.   Correct, yes.
12   Q.   And all employees with this job code
13 were classified as exempt from overtime, correct?
14   A.   That's correct.
15   Q.   And they are all ineligible for
16 overtime, correct?
17   A.   Correct.
18   Q.   And none received overtime, correct?
19   A.   Correct.
20   Q.   And they all are paid on a salary basis,
21 correct?
22   A.   Correct.
23   Q.   And what about telecommunications
24 analyst advanced, 34510; are all -- are all
25 employees who are assigned the job code 34510

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1   subject to the same policy and practice regarding
2   overtime?
3   A.   Yes.
4   Q.   And all employees with this job code
5   were classified as exempt from overtime, correct?
6   A.   Correct.
7   Q.   And they're all ineligible for overtime,
8   correct?
9   A.   Correct.
10   Q.   And none of them receive overtime,
11 correct?
12   A.   Correct.
13   Q.   And they're all paid on a salary basis.
14   A.   Correct.
15   Q.   And how about 34520; are all employees
16 that are assigned the job code 34520 subject to the
17 same policy or practice regarding overtime?
18   A.   Yes.
19   Q.   And are all employees with this job code
20 classified as exempt from overtime?
21   A.   Yes.
22   Q.   And they're all -- and all job -- all
23 EDS employees that are given the job code 34520 are
24 ineligible for overtime.
25   A.   That's correct.

32 (Pages 122 to 125)

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1   Q.   And all employees that are given the job
2 code 34520 are paid on a salary basis.
3   A.   That's correct.
4   Q.   Now, do you see on page 12 of this
5 document?
6   A.   Yes.
7   Q.   Is this a job progression?
8   A.   Yes.
9   Q.   Okay. And is this job progression the
10 same for all employees with -- within the
11 telecommunications family regardless of where they
12 worked, regardless of which client they worked for?
13   A.   Yes.
14   Q.   And is this job code progression the
15 same for employees within the telecommunications
16 family regardless of which geographic area they
17 worked in?
18   A.   Yes.
19   Q.   And -- and do you see how -- it states
20 that the table contains the job -- I'm sorry. This
21 table contains the job codes in the
22 telecommunications job family with key roles
23 performed in each code?
24   A.   Yes.
25   Q.   Do you see that?

127

1   A.   Yes.
2   Q.   And are there -- and are there overlap
3 or similar key job roles amongst these five job
4 codes?
5   A.   Yes.
6   MS. RUDICH: I'm going to ask the
7 next document to be marked as Evans Exhibit 8. It's
8 a multipage document entitled "Service Delivery Job
9 Family, Systems Administrator Competency Based
10 Matrix, Individual Performer," and it has a job --
11 Bates number EDS (Plaintiffs Group) 000883, 884,
12 885, 892, 893, and 894.
13   (Deposition Exhibit 8 marked.)
14   (Witness reviews document.)
15   Q.   (BY MS. RUDICH) And this is a similar
16 document as what you were looking at in Exhibit 7,
17 but for the service delivery job family, correct?
18   A.   Yes, ma'am.
19   Q.   Now, let's look at 34060 on page 10
20 where it says systems administrator.
21   A.   Yes.
22   Q.   Are all systems administrators subject
23 to the same EDS policy or practice regarding
24 overtime?
25   A.   Yes.

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1   Q.   And are all employees with this job code
2 classified as exempt from overtime?
3   A.   Yes, they are.
4   Q.   And they're all ineligible for overtime,
5 correct?
6   A.   Correct.
7   Q.   And none receive overtime, correct?
8   A.   Correct.
9   Q.   And they're all paid on a salary basis,
10 correct?
11   A.   That's correct.
12   Q.   And how about for -- let's speed this
13 along. How about for 34070 and 34080; do you see
14 that on page 11?
15   A.   I see them.
16   Q.   Are they -- are these job codes subject
17 to the same policy -- EDS policy and practice
18 regarding overtime?
19   A.   Yes.
20   Q.   And are all employees with job codes
21 34070 and 34080 classified as exempt from overtime?
22   A.   Yes.
23   Q.   And are they -- are all the employees
24 with these job codes eligible -- ineligible for
25 overtime under EDS policy and practice?

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1   A.   Yes.
2   Q.   And under EDS policy and practice, none
3 of them received overtime, correct?
4   A.   Correct.
5   Q.   And now I'm going to refer you to page
6 12 of Exhibit 8. That's a job progression for the
7 systems administrator job family, correct?
8   A.   Correct.
9   Q.   And this lists the key job roles
10 performed in each code?
11   A.   Yes.
12   Q.   And that's for -- and this job
13 progression is the same for all employees within the
14 systems administrator job families throughout the
15 country, correct?
16   A.   Yes. It's a typical job progression.
17 People aren't locked into it, but yes.
18   Q.   And it applies to all employees within
19 the systems administrator job families throughout
20 the country?
21   A.   Yes, it does.
22   Q.   And it doesn't matter which client they
23 work for?
24   A.   No, it doesn't.
25   Q.   And it doesn't matter where they're

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1   located geographically.
2   A.   Correct.
3   Q.   It doesn't matter if they work from home
4   or they're located in -- in a specific client,
5   correct?
6   A.   Correct.
7   MS. RUDICH: I'm going to ask the
8   next document be marked as Evans Exhibit 9. It's a
9   multipage document entitled "Service Delivery Job
10   Family, Service Center Competency Based Matrix,
11   Individual Performer," and it has EDS (Plaintiffs
12   Group) 000757, 758, 765, 7 -- 766.
13   (Deposition Exhibit 9 marked.)
14   MS. RUDICH: I'm dyslexic with
15   numbers.
16   MR. WYMER: I'm going to point out
17   for the record, it's not really interfering with the
18   deposition, but that these competency matrices that
19   are being introduced, Exhibit 7, 8, 9, and I suspect
20   others, are not complete documents as the contents
21   reveals and that Bates numbers are skipped, but
22   since it appears that you're entering them to ask
23   about the last couple of pages, we don't object to
24   the introduction of partial documents. I just want
25   to note for the record they're not complete.

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1   MS. RUDICH: Okay. I think the
2   record speaks for itself because I've been reading
3   the -- that's the reason why I've been reading --
4   reading the individual pages.
5   Q.   (BY MS. RUDICH) Now, according to EDS's
6   document, job codes 34530, 34540, and 34550 are part
7   of the service -- service -- I'm sorry, service
8   delivery job family, correct?
9   A.   Correct.
10   Q.   Which of these -- are all of these job
11   codes subject to the same EDS policy and practice
12   regarding overtime?
13   A.   Yes. The three -- the three job codes
14   reflected here, that's correct.
15   Q.   And what is -- what is that policy or
16   practice regarding overtime?
17   A.   That they are exempt from overtime.
18   Q.   And does -- and does that mean that
19   according to the EDS policy and practice, all
20   employees that have -- all employees within the
21   job -- the -- I'm sorry, the service delivery job
22   family are subject to the same policy and practice
23   regarding overtime?
24   A.   For these three codes, I can't tell
25   whether --

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1   Q.   For these three codes.
2   A.   Yes, for these three codes, that's
3   correct.
4   Q.   And that means that they're all
5   ineligible for overtime?
6   A.   That's correct.
7   Q.   And that under the EDS policy and
8   practice, none of them received overtime?
9   A.   That's correct.
10   Q.   And that under the EDS policy and
11   practice, they were all paid on a salary basis?
12   A.   That's correct.
13   Q.   I'm going to ask you to look at page 10.
14   And what is this chart set forth on page 10 of
15   Exhibit 9?
16   A.   Appears to be the job progression.
17   Q.   And under the bullet points on each --
18   under each job, it -- are those, according to this
19   document, the key role -- job roles performed in
20   each code?
21   A.   It's according to this document, yes.
22   Q.   And are the key job roles for these
23   three job codes similar?
24   A.   According to this document?
25   Q.   Yes.

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1   A.   Yes, according to this document.
2   MS. RUDICH: I'm going to ask that
3   the next document be marked as Evans Exhibit 10.
4   It's a multipage document entitled "Corporate Job
5   Family, Information Security Competency Based
6   Matrix, Individual Performer," has the Bates stamp
7   number 00 -- 0000262, 263, 264, 270, 271, and 272.
8   (Deposition Exhibit 10 marked.)
9   (Witness reviews document.)
10   Q.   (BY MS. RUDICH) I'm going to ask you to
11   look at page 3 of this document. Do you see there's
12   -- in the paragraph on page 3 where it says, these
13   guidelines apply globally to all employees in
14   countries where this document has been successfully
15   implemented subject to local law. Do you see that
16   sentence?
17   A.   Yes.
18   Q.   What do you understand that to mean?
19   A.   I lost it.
20   Q.   Okay. It's, I'll tell you, one, two,
21   three, four, five, six lines down on the line that
22   starts contract period.
23   A.   These -- okay. Let me read that. It's
24   just a guideline that is implemented in countries
25   where I guess the local law has not prohibited such

34 (Pages 130 to 133)

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1 guidelines from being used.
2   Q.   So this means that these guidelines
3 apply to all employees that are within this --
4 within the corporate job family where local law has
5 not -- has allowed it to be used, correct?
6   A.   Well, it means they could be used. It
7 further says in the paragraph, it's intended only as
8 a guideline, so it's okay.
9   Q.   But it says these guidelines apply
10 globally. What does apply -- what do you understand
11 "apply globally" to mean?
12   A.   When you look at the whole paragraph in
13 its entirety, I mean, that the guidelines are not
14 requirements, but they -- they are there as a
15 guideline, and unless prohibited by law in some of
16 these countries outside the U.S., then they could
17 be -- they can be used as a guideline.
18   Q.   Right, but what do you understand "apply
19 globally" to mean? Does that mean that -- that
20 these -- these guidelines apply globally, correct?
21   A.   Correct.
22   Q.   Okay.
23   A.   It means that these -- what we are
24 instructed -- what the guidelines we are -- these
25 guidelines could be applicable outside the U.S.

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1 unless prohibited by law.
2   Q.   And in the U.S.?
3   A.   And in the U.S.
4   Q.   Do you believe that these guidelines are
5 illegal in the U.S.? Do you believe that -- let
6 me -- let me rephrase it.
7   Do you believe that any law within
8 the U.S. would prohibit the use of these guidelines?
9   A.   That any law would prohibit them? No.
10   Q.   So does that mean that these -- so
11 therefore that these guidelines apply throughout the
12 United States, correct?
13   A.   They are there to be used, but they are
14 not a policy per se.
15   Q.   Oh, I understand it's not a policy. I'm
16 just saying that these guidelines apply.
17   A.   Yes.
18   Q.   These guidelines apply throughout the
19 U.S., that's all I'm saying.
20   A.   These guidelines are published for the
21 U.S., and they can be used in the U.S.
22   Q.   So they're published for all employees
23 in the U.S., correct?
24   A.   Correct.
25   Q.   And they can be used by all employees in

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1 the U.S., correct?
2   MR. WYMER: Objection as to form.
3   Q.   (BY MS. RUDICH) They're available to be
4 used to all employees in the U.S., correct?
5   A.   That's correct.
6   Q.   And when all employees in the U.S. are
7 given their performance evaluation, the job code
8 descriptions set forth herein are used, correct?
9   A.   Correct, if they are in one of these job
10 titles, job codes.
11   Q.   Yes, okay. Now, I'm going to refer you
12 to page 9 and 10, have you look at 9 and 10, try to
13 speed this along. I'm going to refer you to job
14 code 33700, 33710, 33720 and 33730. Are all these
15 job codes subject to the same policy or practice --
16 same EDS policy and practice regarding overtime?
17   A.   Yes.
18   Q.   And what is that policy and practice?
19   A.   That they are exempt from overtime.
20   Q.   And that means that they are all subject
21 to the same policy -- EDS policy and practice that
22 they're -- that they did not receive -- that they do
23 not receive overtime, correct?
24   A.   That's correct.
25   Q.   And that -- that means that these

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1 three -- four -- these four job codes that are
2 within the corporate job family are all subject to
3 the same EDS policy and practice that they're all
4 paid on a salary basis, correct?
5   A.   That's correct.
6   Q.   I'm going to ask you to look at page 11.
7 Is this -- what is this chart?
8   A.   This is the job progression for the
9 information security -- well, it's for this
10 particular job -- information security job family.
11   Q.   Okay. And when was -- can you, just for
12 the record, state when -- what -- when this job
13 progression chart was implemented? And I'm going to
14 show you the bottom right-hand corner.
15   A.   Yes. This document appears to have been
16 updated on December 2nd, 2008.
17   Q.   Okay. And this job progression applies
18 to all -- this job progression applies to all
19 employees with the job codes in the information
20 security job family, correct?
21   A.   Yes. Again, it's a typical job
22 progression, but yes.
23   Q.   And it doesn't matter -- and it applies
24 to all employees within the information security job
25 family, no matter -- no matter which client they

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1 work for, correct?
2   A.   That's correct.
3   Q.   And no matter which -- where
4 geographically they're located, correct?
5   A.   That's correct.
6   Q.   And it applies to all job -- employees
7 with job codes in the information security job
8 family, whether they work from home or not?
9   A.   Correct.
10   Q.   Okay.
11   MS. RUDICH: I'm going to ask that
12 this next document be marked as Evans Exhibit 11.
13 It's a multipage document entitled "Technical
14 Delivery Job Family," and it has the Bates stamp
15 number EDS (Plaintiffs Group) 0000377, 378, 380,
16 387, 388, 389, and 390.
17   (Deposition Exhibit 11 marked.)
18   (Witness reviews document.)
19   Q.   (BY MS. RUDICH) Have you reviewed it,
20 Mr. Evans?
21   A.   Yes, I have.
22   Q.   Now, you earlier testified about an
23 audit of certain job codes or certain job families
24 that I think your team performed along with, I
25 guess, Jennifer Miner?

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1   Q.   Totally, I got it.
2   A.   Okay.
3   Q.   Okay. I'm going to ask you to look at
4 page 11 and 12. Now, are all the job codes set
5 forth in this document, 34350, 34260, 34270, and
6 34280 subject to the same EDS policy and practice
7 regarding payment of overtime?
8   A.   Yes, they are.
9   Q.   And are all -- and are all employees
10 with this job -- with these job codes subject to the
11 same EDS policy and practice regarding classifying
12 them as exempt from overtime?
13   A.   That's correct.
14   Q.   And are they all subject to the same EDS
15 policy and practice in that they're all ineligible
16 for overtime?
17   A.   That's correct.
18   Q.   And are the job codes set forth in this
19 document, 34350, 34260, 34270, and 34280, all
20 subject to the same policy and practice regarding
21 how they're paid?
22   A.   That's correct.
23   Q.   And they're all paid on a salary basis,
24 correct?
25   A.   That is correct.

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1   A.   The voluntary audit review conducted
2 under the Department of Labor?
3   Q.   Yes.
4   A.   Yes.
5   Q.   And was -- did that audit involve the
6 job codes set forth in this document?
7   A.   No, it did not.
8   Q.   On what job codes did it involve?
9   A.   System administrator and system
10 administrator advanced.
11   Q.   Okay. Okay. Now, I'm going to ask you
12 to look at page 11 and 12 of what's been marked as
13 Evans 11.
14   A.   Before we move on, can I go back one?
15 The intent of our internal audit did not include
16 these job titles, but there were some occasions
17 where a couple of people came forward and said that
18 they were sitting side by side next to somebody who
19 was, so we kind of pulled them in.
20   Q.   I totally understand. It wasn't the
21 subject of the job code, but it might have been --
22 but since there was a job audit going on, somebody
23 might have heard of it and they wanted -- then
24 contacted you?
25   A.   Yes, just wanted that for the record.

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1   Q.   I'm going to ask you to look at what's
2 on page 13. What is -- what is -- what's on --
3 what's this chart?
4   A.   Excuse me. It's the job progression for
5 the infrastructure job family.
6   Q.   And does this job progression apply to
7 all individuals within the infrastructure job family
8 regardless of where they work?
9   A.   Yes.
10   Q.   And does it apply to all employees
11 within the infrastructure job family regardless of
12 the client they work for?
13   A.   Yes.
14   Q.   And does it apply to all employees
15 within the infrastructure job family regardless of
16 whether they work at home or at a -- other location?
17   A.   Correct.
18   MS. RUDICH: And -- I'm going to ask
19 that this next document be marked as Evans Exhibit
20 12. It's a multipage document entitled "Technical
21 Delivery Job Family, Information Competency Based
22 Matrix, Individual Performer," and it has the Bates
23 stamp number EDS 1, 2, 3, 10, 11, 12, and 13.
24   (Deposition Exhibit 12 marked.)
25   Q.   (BY MS. RUDICH) Mr. Evans -- Mr. Evans,

36 (Pages 138 to 141)

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1   have you ever seen this document before? Have you
2   ever seen any portion of this document before?
3   A.   Yes, I've seen.
4   Q.   And which portion have you seen before?
5   A.   I've seen the job descriptions.
6   Q.   Okay. And that's the job descriptions
7   set forth on 9 -- page 9 and 10 of this document?
8   A.   Yes.
9   Q.   And 11, I'm sorry. 9, 10, and 11.
10   A.   Yes.
11   Q.   And are job code -- which job code --
12   which job codes within this document are subject to
13   the same EDS policy and practice regarding overtime
14   payment?
15   A.   Which job codes are treated the same?
16   Q.   Are subject to the same EDS policy and
17   practice regarding overtime?
18   A.   Job code 34330, 34200, 34210, and 34220.
19   Q.   Okay. And what is that policy and
20   practice that they're all subject to?
21   A.   That they are considered exempt from
22   overtime.
23   Q.   Meaning that they -- that all --
24   everybody who was given these job codes throughout
25   the country are not entitled to overtime, correct?

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1   A.   That's correct.
2   Q.   And everybody in the company that
3   receives these job codes are paid on a salary basis,
4   correct?
5   A.   That's correct.
6   Q.   Now, let's look at page 12 of this
7   document, 12 and 13, I'm sorry. What is -- what is
8   represented on page 12 and 13 of plaintiffs -- I'm
9   sorry, of Evans Exhibit 12?
10   A.   This is the typical job progression for
11   the information job family.
12   Q.   Okay. And does this job progression
13   apply to all employees within the information job
14   family, regardless of which client they work for?
15   A.   That's correct.
16   Q.   And does it apply to all employees
17   within the information job family, regardless of the
18   geographic location in which they work?
19   A.   Yes.
20   Q.   And does it apply to all employees
21   within the information job family, regardless of
22   whether they work from home or they work outside the
23   home?
24   A.   That's correct, it does.
25   Q.   Okay.

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1   MS. RUDICH: We can take a break now
2   for a minute.
3   (Recess held.)
4   MS. RUDICH: I'm going to ask that
5   this next document be marked as Evans 13. It's a
6   document called "2007 EDS Shared Competencies"
7   bearing Bates stamp number 0004038 through 4050.
8   (Deposition Exhibit 13 marked.)
9   (Witness reviews document.)
10   Q.   (BY MS. RUDICH) Okay. Mr. Evans, have
11   you had a chance to review this document?
12   A.   Yes.
13   Q.   Okay. What is this document?
14   A.   I have -- haven't seen this before.
15   Q.   Okay. Have you ever seen any portion of
16   it before?
17   A.   No, I have not.
18   MS. RUDICH: I'm going to ask that
19   this next document be marked as Exhibit -- Evans
20   Exhibit 14. It's a multiple page document entitled
21   "Shared Competencies" having Bates stamp number 5606
22   through 5624.
23   (Deposition Exhibit 14 marked.)
24   Q.   (BY MS. RUDICH) Before I ask you
25   questions about this -- this -- Evans Exhibit 14, do

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1   you know who would -- who would know about -- who
2   would have information regarding Exhibit 13?
3   A.   Jennifer Miner.
4   Q.   Thank you. Anybody else?
5   A.   No. She's -- she would be the one.
6   Q.   Okay. Have you ever seen this document
7   before? I'm talking about Evans Exhibit 14.
8   A.   Let me -- give me a chance to look
9   through it real quick.
10   Q.   I'm sorry. Sure.
11   (Witness reviews document.)
12   A.   This does not look familiar to me.
13   Q.   (BY MS. RUDICH) Do you know who
14   would -- who would know about this document?
15   A.   Jennifer Miner.
16   Q.   Why would Jennifer Miner know about this
17   document? Why do you -- let me withdraw.
18   Why do you believe Jennifer Miner
19   would know about this document?
20   A.   Because this document appears that it
21   would have been generated from the corporate
22   compensation department, and she was the manager of
23   that group.
24   Q.   Okay. Okay. Thanks. I'm going to
25   refer you to page 5 of this document. No. I'm

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1   sorry. Page 4 of this document. Do you see
2   the part where it says overview and purpose. The
3   EDS competency based matrix is a career development
4   tool for employees which can be used to define the
5   requirements for a specific job code category. Do
6   you see that portion --
7   A.   Yes.
8   Q.   -- of the sentence? What do you
9   understand that to mean?
10   A.   This appears to be a matrix intended to
11   help with career development, but it also looks like
12   the focus of this is more concentrated on behavioral
13   type aspects rather than functional, so it might
14   explain why I -- it's unfamiliar to me.
15   Q.   And this is behavioral for specific job
16   category descriptions? And I'm going to -- I'll
17   withdraw that question.
18   Is that -- you mean behavioral
19   aspects relating -- as they relate to specific job
20   category descriptions?
21   A.   To -- it appears this is more broken out
22   even at a higher level on what I would refer to as
23   an EE01 category, like a clerical professional
24   manager, which is different than the others, job
25   families and things that we've been talking about.

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1   Q.   But it is -- all right. But it's broken
2   down by job code levels, correct? If you look on
3   page 7 where it says competency name, and then one
4   half of that box is job -- EDS job category, and
5   then right underneath it says job code levels.
6   A.   Yes, I think we're saying the same
7   thing. We're just saying it differently.
8   Q.   Okay.
9   A.   Professionals, for example, is an EE01
10   category, but it also encompasses all the jobs
11   within EDS that start with a 3.
12   Q.   I see. I see. So for this particular
13   document, EDS is grouping together all -- all job
14   codes that begin with the letter -- I'm sorry, begin
15   with the number 3, correct?
16   A.   That's correct.
17   Q.   And it applies -- and all these
18   different competency -- competencies apply in the
19   same way. For instance, competency one, idea
20   leadership, that would apply in the same way to all
21   employees with job code beginning with the number 3,
22   correct?
23   A.   I really don't know.
24   Q.   I understand.
25   A.   This is more behavioral type issues,

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1   which I...
2   Q.   Okay. I understand. Thank you.
3   A.   Okay.
4   MS. RUDICH: I'm going to ask that
5   the next document be marked as Evans Exhibit 15.
6   It's a -- looks like it's a -- like a screen view of
7   a EDS InfoCentre Global -- Global page that states
8   job matrices.
9   (Deposition Exhibit 15 marked.)
10   (Witness reviews document.)
11   A.   Okay.
12   Q.   (BY MS. RUDICH) Mr. Evans, have you had
13   a chance to review what's been marked as Evans
14   Exhibit 15?
15   A.   Yes.
16   Q.   Have you ever seen this before? When I
17   say "this," I mean have you ever seen what's a
18   computer screen or -- you know, or -- I guess a
19   computer screen that looks like this.
20   A.   Yeah, this follows the same type of
21   format that other groups post on. I can't say that
22   I ever went to this particular screen for anything,
23   but it does follow the same format.
24   Q.   Okay. Now what is the EDS InfoCentre
25   Global?

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1   A.   It's the corporate intranet, if you
2   will. It's the website for the EDS employees for
3   both manager communications and also communications
4   that employees can -- if employees want to check on
5   their benefits, for example, they can access their
6   individual information through this website.
7   Q.   Now, is there anything on this
8   particular exhibit which indicates who this -- who
9   would be able to assess or -- access or look at
10   this -- this -- this screen or this web page? Would
11   this be available to all employees of the company or
12   only a certain level of employees?
13   A.   You know, I -- I don't know. There was
14   information posted or available on this that was
15   specifically applicable to managers only, but I'm
16   not sure whether the InfoCentre system had the
17   capability of limiting it only to managers, so I
18   don't know.
19   Q.   Okay. Now, I'm going to ask you to look
20   at the last page of this -- of what's been marked as
21   Evans Exhibit 15, where it says job codes and
22   descriptions last updated November 22nd, 2005. Do
23   you see that?
24   A.   Yes. Yes. I see it, yes.
25   Q.   Okay. Now, what is the enterprise

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1 system?
2   A.   That's -- that's one of the -- it's the
3 HR system, for lack of a better technical
4 terminology, but that's the corporate HR system
5 where the employee information would be retained.
6   Q.   Now, do all employees -- are -- do all
7 employees of EDS have access to the enterprise
8 system?
9   A.   Yes.
10   Q.   Okay. And what is an employee
11 self-service page of the enterprise system?
12   A.   That's -- you know, I don't know. I've
13 never accessed it.
14   Q.   Okay. Now, does this page indicate that
15 job codes and descriptions as of November 22nd,
16 2005, were available to all employees of EDS?
17   A.   Again, I don't know. I was able to get
18 them. I don't know if I was able to get them
19 because I'm an employee or because I'm a manager.
20 So...
21   Q.   But this -- but this particular screen
22 would have come from the EDS intranet that was
23 accessible by all employees?
24   A.   The InfoCentre.
25   Q.   Yes.

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1   A.   Yes, that's correct.
2   Q.   Thank you.
3   MS. RUDICH: I'm going to ask that
4 this next document be marked as Evans Exhibit 17.
5 It's a two-page document having Bates stamp number
6 5836 and 5837, and it's called "Tools and Resources
7 Job Family Matrices."
8   MR. WYMER: Is that 16?
9   MS. ANSELMO: 16.
10   MS. RUDICH: Yes, I'm sorry. I said
11 17. 16.
12   (Deposition Exhibit 16 marked.)
13   (Witness reviews document.)
14   A.   Okay.
15   Q.   (BY MS. RUDICH) Mr. Evans, have you
16 ever seen this document before?
17   A.   No.
18   Q.   Have you ever seen a web page or a
19 website that looks like this document?
20   A.   The format, yes, but not with the
21 content.
22   Q.   Have you ever seen the content that's
23 contained in this document before?
24   A.   Certain elements. Job codes and
25 descriptions, for example, I've seen.

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1   Q.   Where do you see that job code and
2 description?
3   A.   Oh, I'm sorry. I was looking at the
4 job -- in the middle.
5   Q.   Where it says the job family matrix?
6   A.   Yes.
7   Q.   So you've seen the job code
8 descriptions?
9   A.   Yes.
10   Q.   And the job codes and descriptions?
11   A.   But I misspoke. That's not a -- you
12 can't get to it from here it looks like. Well, yes,
13 you can, toward the top where it says related
14 topics.
15   Q.   Oh, I see, okay. But you haven't seen
16 any -- you haven't seen this particular web page
17 before.
18   A.   That's correct.
19   MS. RUDICH: I'm going to have
20 marked the next document as Evans Exhibit 17. It's
21 job matrices and job codes, having the Bates stamp
22 number 5599 through 5603.
23   (Deposition Exhibit 17 marked.)
24   (Witness reviews document.)
25   Q.   (BY MS. RUDICH) Okay. Mr. Evans, have

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1 you ever seen this document before?
2   A.   This document does not look familiar,
3 but I'm vaguely familiar with some of the contents.
4   Q.   And the -- does this -- does the content
5 of this document show the EDS job families?
6   A.   Yes.
7   Q.   Are there any others that aren't
8 contained on this document, that you know of?
9   A.   Not that I know of.
10   Q.   Okay. Thank you.
11   MS. RUDICH: I'm going to ask that
12 this -- I'm going to ask that this next document
13 be -- I'm going to ask that this next document be
14 marked as Evans Exhibit 18. It's a one-page email
15 from Mike Evans to Maria Mercer, Mercer, subject is
16 job code review, and it's Bates stamp number 15308.
17   (Deposition Exhibit 18 marked.)
18   (Witness reviews document.)
19   Q.   (BY MS. RUDICH) Mr. Evans, is this one
20 of the documents that you reviewed in connection
21 with your deposition prior to your deposition here
22 today?
23   A.   Yes, I have seen this.
24   Q.   And when did you -- when was the most
25 recent time that you've seen this?

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1   A.   Recently, it must have been yesterday.
2   Q.   Okay. And what is it?
3   A.   This is a -- Maria Mercer is the HR
4   manager over the -- the self-audit that we
5   initiated, that I spoke about earlier. These are
6   talking points for the senior leader over that group
7   because Maria was going to meet with him and discuss
8   what our target -- what our intention was.
9   Q.   When you say it was a talk -- what do
10 you mean by it was "talking points for the senior
11 leader over the group"?
12   A.   She met with the business leader over
13 the group of which we had intended to do this
14 self-audit, and these are basically the points that
15 she was going to let him -- to brief him on what the
16 activity was that we had planned.
17   Q.   And what group did you do this
18 self-audit?
19   A.   We ended up doing it for all the
20 domestic U.S. It started out with only the -- a
21 group called Global Field Services, which I
22 referenced earlier today. As we progressed into the
23 audit, that organization was merged into a larger
24 organization called the hubs, Tom is the manager
25 over the hubs. The hubs are, in essence, five

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1   regional operating centers, and this memo reflects
2   our intent to conduct the internal audit on the
3   hubs, which included the Global Field Services.
4   Q.   Okay. And then when you say -- what --
5   was there a specific job code over which you were
6   going to be doing this audit?
7   A.   Meaning in scope job codes?
8   Q.   Yes.
9   A.   Yes, there were two of them.
10   Q.   Which were they?
11   A.   System administrator and system
12 administrator advanced.
13   Q.   And why did you pick those two?
14   A.   These were -- when we first looked into
15 the Global Field Services organization, these two
16 job codes represented the majority of the people who
17 were in the organization we were looking at.
18   Q.   Okay. And what -- when you say that the
19 hubs is comprised of five regional operating
20 centers, what five -- what are these five regional
21 operating centers?
22   A.   The hubs are -- and I've referenced a
23 lot of customer requirements. The hubs are -- are
24 regional offices that actually support multiple
25 customers, and there was a hub, for example, in

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1   Oklahoma City. There was a hub in California. I
2   just went blank on where the other hubs were. I
3   think one was in Plano, Texas.
4   Q.   Was there one in -- in Georgia?
5   A.   Gosh, I don't want to guess, but there's
6   two more.
7   Q.   How about in Georgia?
8   A.   I don't think there was one in Georgia.
9   Q.   And what are these hubs called?
10   A.   Hubs. I mean, really, it's a
11 southwestern hub or eastern hub or...
12   Q.   Okay.
13   A.   I can get you the --
14   Q.   Okay. And did you -- did you draft this
15 email, Mr. Evans?
16   A.   Yes.
17   Q.   And -- now, and what -- what did you
18 mean by the -- when you say job code review within
19 five domestic hubs to determine correct job codes
20 assignments and overtime designation, what did you
21 mean by that?
22   A.   Well, we were going to look at the --
23 the individuals in the two referenced job titles to
24 ensure that they should be in there. Our
25 indications at the time were -- which prompted us to

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1   go forward with this, is that there were quite a few
2   that should not have been.
3   Q.   Should not have been what?
4   A.   Should not have been coded as system
5   administrators or system administrator advanced.
6   They were doing more of what I refer to desktop
7   support type functions, so this was our intent to go
8   in and try to clean up the situation.
9   Q.   Now, it says here that, due to the
10 sensitive nature of this review and the absolute
11 necessity for this to appear as a routine review.
12 Why was this review sensitive? What was the
13 sensitive nature of this review?
14   A.   Well, the way that we conducted it was
15 to send out questionnaires to the individuals and
16 ask them to identify what their roles were. I would
17 say keep in mind that this happened during a time
18 period when EDS was going through a lot of cost
19 reduction measures. A lot of people had been -- had
20 gone a while without raises or bonuses and we
21 didn't -- we wanted to get honest answers back from
22 the questionnaire, and our fear was, which was
23 shared with the Department of Labor, if the word got
24 out that you could get money back if you customize
25 this report or customize the job questionnaire a

40 (Pages 154 to 157)

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1   certain way, that we would not be able to do an
2   accurate assessment, so we did not send out the
3   questionnaire with the sole -- and communicate that
4   the purpose of it was to identify misclassifications
5   from an exempt/nonexempt perspective. We wanted to
6   get their honest answers back. We didn't want them
7   to say I want to get some money back, so I'm going
8   to say that I worked 80 hours a week. You know, if
9   they worked 80 hours a week, then they would put
10 that down from an honest answer. We would address
11 it from that standpoint.
12   Q.   Okay. Now, I -- okay. That makes
13 sense. Now, systems -- now, you said that this --
14 this audit covered job code -- the systems
15 administrator and the systems administrator
16 advanced.
17   A.   Correct.
18   Q.   Now, are there any other locations
19 within the United States in which systems
20 administrators and systems administrators advanced
21 employees work other than the five domestic hubs?
22   A.   Yes. Yes. Once we completed this phase
23 of our audit or review, we just determined as a
24 company, if we're going to do this, let's do it
25 right, and let's just expand it to all of the

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1   domestic operations to include any individual in the
2   U.S. who was coded as a system administrator or
3   system administrator advanced. So we included it
4   outside the hubs to include General Motors account,
5   for example, the -- our Navy NMCI account and bigger
6   organizations that support specific customers rather
7   than located in hubs. So to answer your question,
8   by the time we completed our -- our investigation or
9   review, we had covered everyone in the U.S. who were
10 coded as system admins or system administrator
11 advanced.
12   Q.   Based on this job code review, after
13 this job code review was over, did you believe that
14 everybody who -- who -- everybody who had the job
15 code systems administrator and systems administrator
16 advanced were properly classified?
17   A.   As of the time we completed the survey,
18 yes, particularly from an exempt/nonexempt
19 perspective. Now, we -- we tried to err on the side
20 of compliance and, in all honesty, we probably coded
21 some people nonexempt that if we really looked at
22 their job descriptions or -- or job functions much
23 more closely, there could have been an argument that
24 they were exempt, so if it could have gone either
25 way, we erred on the side of compliance.

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1   Q.   At the end of this job code review, did
2   you believe that everybody who had the job title
3   systems administrator were doing -- were performing
4   the same or similar tasks?
5   A.   No. They were performing exempt tasks,
6   but there was still that gray area that -- that I've
7   referenced earlier that --
8   Q.   And I understand they weren't doing the
9   same exact things. My question is were they doing
10 similar tasks.
11   A.   With the system administrators, you
12 know, I can't say with any degree of certainty.
13   Q.   Was the purpose of this job review to
14 ensure accurate and consistent job code assignments?
15   A.   It was truly intended to determine the
16 correct exempt/nonexempt, and to try to get the
17 people in the correct job code would be a byproduct
18 of that.
19   Q.   So that was the -- so after the -- after
20 this review was completed, people -- EDS employees
21 were -- there was an accurate and consistent job
22 code assignment for -- for systems administrators
23 and systems administrators advanced as a byproduct
24 of whether they were exempt or nonexempt, correct?
25   A.   Yes.

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1   Q.   Did you tell employees that the purpose
2   of the review was to ensure accurate and consistent
3   job code assignments?
4   A.   Yes.
5   Q.   Did you believe that?
6   A.   Yes. And by the time we completed it,
7   we were much further along than we were to begin
8   with. But again, my role was to decide -- assign
9   the exempt/nonexempt status. Once we decided that
10 they were of an exempt nature, the managers worked
11 with the corporate communication group at that --
12 corporation compensation group at that point.
13   Q.   And weren't EDS leaders told that the --
14 that this audit was to ensure accurate and
15 consistent job code assignments within the company?
16   A.   Yes.
17   Q.   So that was the understanding that was
18 given to EDS employees, correct?
19   A.   Correct.
20   Q.   And that's true, right?
21   A.   The main purpose was the
22 exempt/nonexempt, but to get to the exempt/nonexempt
23 point, you try to incorporate the correct job codes
24 assignment, too, so yes, that's true.
25   Q.   Why would you tell -- did you -- did you

41 (Pages 158 to 161)

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1　ever tell any -- did you ever tell the EDS employees
2　that the main purpose of this audit was to ensure
3　proper classification for exempt and nonexempt
4　classifications?
5　　　A.　　No.
6　　　Q.　　Why not?
7　　　A.　　Because we wanted honest answers back
8　from -- from the questionnaires, and we thought, and
9　the Department of Labor agreed with us, by telling
10　them the true nature of this investigation, it may
11　have caused some people to skew their answers.
12　　　Q.　　But isn't -- you can't -- you can't have
13　a -- you can't have a proper job code
14　classification -- you can't have people given the
15　same job codes if they're not doing similar things,
16　correct? How can you have that if they're all -- if
17　all -- let me rephrase that.
18　　　　　　If all employees within the company
19　whose -- whose job code begins with 3 are classified
20　as exempt, and I think you testified to that
21　earlier, right?
22　　　A.　　Correct. Correct.
23　　　Q.　　In order to accurately -- in order to
24　accurately classify them, you would have to know
25　what they're doing, correct?

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1　　　A.　　Correct.
2　　　Q.　　And you would have to know that they
3　were -- whether or not people who were given the
4　same job code were doing similar things, correct?
5　　　A.　　Correct.
6　　　Q.　　So, therefore, people who were doing the
7　same or similar things were given the same job code,
8　correct?
9　　　A.　　In this case, at the end of the audit,
10　investigation, to the best that we could, that's --
11　that's --
12　　　Q.　　Yes?
13　　　A.　　Yes, correct.
14　　　Q.　　Now --
15　　　A.　　Let me -- to the extent that we could
16　make a determination based on just the questionnaire
17　itself, we -- had we had the time and the resources,
18　the correct way, the really thorough way, would be
19　to follow up with an individual analysis with the
20　managers and the employees. We didn't have time to
21　do that. So this was a good-faith effort to try to
22　clean up a situation based on the resources that
23　were available.
24　　　Q.　　But the same time and resources that
25　were available when you made the determination

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1　whether somebody was exempt or nonexempt, correct?
2　　　A.　　Yes, I did this and spent a lot of time
3　on it, but I can't look you in the eye and say with
4　any certainty that at the very end of it, the whole
5　situation -- you know, that I am 100 percent
6　comfortable that everyone was similarly situated
7　when we put them in, you know, one of the new job
8　codes.
9　　　Q.　　So you can't say with a hundred percent
10　certainty that everybody who was classified as
11　exempt or nonexempt were properly classified either,
12　correct?
13　　　A.　　I can say that pretty much with a
14　good -- yes.
15　　　Q.　　So you could say that about the -- about
16　the FLSA classification, but you can't say that
17　about the job codes?
18　　　A.　　In this case, yes. The reason for it,
19　the people that we were trying to identify were
20　desktop support technicians, which are pretty clear
21　cut nonexempt, I think you would agree. I mean,
22　they're just loading up canned software, making sure
23　cables are plugged in, that's -- that's pretty much
24　clear cut nonexempt. The individuals you're talking
25　about are the -- still the high end people that are

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1　doing more design creation, development type work,
2　which the system administrator job may or may not be
3　the correct exempt code they should be in, but I
4　think we would agree that they are still exempt.
5　　　Q.　　But what about the people that were
6　class -- did -- you testified that, you know, there
7　were degrees of job codes, for instance 3400, 3410,
8　3420, you -- and as the numbers went higher, the --
9　I guess the skills or the level of -- the level of
10　professionalism went higher, would be greater,
11　correct?
12　　　A.　　I didn't say professionalism. I know
13　what you mean, though.
14　　　Q.　　Let me just give you what's been
15　previously marked as -- let's look at --
16　　　　　　MS. RUDICH: Number 12.
17　　　Q.　　(BY MS. RUDICH) Let's take a look at
18　what's been marked as number 11, infrastructure
19　compe -- job family -- it's technical delivery job
20　family infrastructure competency matrix. Do you see
21　that?
22　　　A.　　Yes.
23　　　Q.　　And let me -- so -- and you testified
24　about -- there's a progression chart on page 13 and
25　14, correct?

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1   A.   Yes, correct.
2   Q.   And I guess the lower the number, the
3   less -- let's say the -- the less -- the less
4   advanced would be the job, correct?
5   A.   Generally speaking, correct.
6   Q.   So someone who has a job code of 34280
7   would be performing a high -- at a higher level than
8   someone who had the job code 34350?
9   A.   They should be.
10   Q.   They should be?
11   A.   Yes.
12   Q.   Correct?
13   A.   Yes.
14   Q.   And therefore -- now I understand what
15   you're saying, that if -- once you get into the
16   34280 or 34270, the difference between those two, it
17   really is -- like they're both exempt, and they're
18   both pretty advanced jobs, so whether they're
19   properly classed -- whether they're -- whether
20   someone is classified as -- given the job code 34270
21   and 34280, it won't affect their exemption.
22   A.   Correct.
23   Q.   So therefore, whether they're doing
24   similar duties, those two jobs might be -- have
25   overlap and might be doing similar duties, correct?

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1   A.   Correct.
2   Q.   But then when you get down to the lower
3   end, whether it's the 34350 or there are some --
4   there was some jobs that even had a 5 --
5   A.   Correct.
6   Q.   -- starting in their job progressions,
7   but between the -- and, you know, what might be a
8   better, let's -- let's look at what's been marked as
9   Exhibit 10. Do you see -- and this is for corporate
10   job family information security, number 10?
11   A.   Do you -- did you get mine?
12   Q.   Oh, I think I have yours, sorry.
13   A.   Explained why I can't find it.
14   Q.   But it's important -- and so in this
15   particular job family, you have both exempt and
16   nonexempt positions, correct?
17   A.   Correct.
18   Q.   And so -- and there -- and if you look
19   at the job progression chart on page 11, the -- the
20   tasks that are -- the key job roles of an
21   information security analyst, which is a 3370 job
22   code, is the same as the information security
23   administrator, which is 51150, the two job -- key
24   job roles. Audit compliance analyst. Which is in
25   both?

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1   A.   Uh-huh.
2   Q.   And incident response analyst, which is
3   in both, correct?
4   A.   According to this document, correct.
5   Q.   So it would be important to make sure
6   that everybody who is performing -- and because --
7   but because these two have very -- have basically
8   the same key job roles, wouldn't you say it's
9   important to make sure that everybody who is
10   performing the information security analyst position
11   are similarly situated and are doing the same things
12   to ensure they're properly classified as exempt or
13   nonexempt?
14   A.   Yes.
15   Q.   It's more -- so it would be more
16   important for the lower positions to make sure
17   everybody is doing similar things than for the high
18   end numbers in the job progression because they're
19   close -- their job duties are close -- close -- are
20   more -- there's more overlap with nonexempt jobs
21   than exempt job duties.
22   A.   Yes, but you have -- this is where the
23   individual analysis takes place because there may be
24   an overlap, but to use this as an example, if you
25   look at the information security administrator, I

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1   can tell you from experience these people do a lot
2   of password resets, which is nothing. I mean,
3   it's -- again, we would agree that this is a
4   nonexempt job. Even though there may be an overlap,
5   if -- if I'm spending half of my time on the
6   nonoverlap functions doing password resets, to me,
7   that's a pretty clear cut example that that's a
8   nonexempt job.
9   Q.   I'm sorry, go ahead.
10   A.   But you don't know until you do the
11   individual analysis because based on what is set up
12   as a corporate job code summary may or may not
13   reflect what actually is going on in the field.
14   Q.   So when you were assigning job codes in
15   the corporate job family, did you do an individual
16   analysis of every single person who held the job
17   code 3, 37000?
18   A.   Well, we didn't do this one. Are you
19   talking about the system administrator?
20   Q.   I'm talking about this one. No, I'm
21   talking about this one. You said that's where the
22   individual -- what the individualized job code, that
23   you -- your testimony -- withdrawn.
24   Your testimony is that that's where
25   the individual analysis comes in in order to see

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1 whether or not they're really doing exempt or
2 nonexempt tasks?
3   A.   Okay. I'm sorry, I thought you were
4 referring to the audit that we had conducted.
5   Q.   No, I'm referring to this particular job
6 code.
7   A.   Okay. And your question on this again
8 was --
9   Q.   Did you do an individualized analysis of
10 every person in EDS who held the position -- who has
11 the job code 33700 to ensure that they are properly
12 classified as exempt under the FLSA?
13   A.   On information security analysts?
14   Q.   Yes.
15   A.   We had a -- several complaints from a
16 particular organization, the NMCI Navy account, and
17 we did do that for the -- for every -- each
18 individual in the information security analyst, we
19 did take a look at each individual in the NMCI
20 account.
21   Q.   How about -- how about every
22 individual -- every employee who held that position
23 throughout the company?
24   A.   No. We did it in the area where we had
25 identified a concern.

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1   Q.   And how do you know, sitting here today,
2 that every employee that has the job code 33700 is
3 properly classified?
4   A.   Well, we know just as well as we don't
5 know.
6   Q.   Exactly. That's my question. How do
7 you know that?
8   A.   We have to assume that they are unless
9 we hear otherwise.
10   Q.   And you assume they are because of
11 this -- of the -- of the -- that -- the fact that
12 they're doing similar -- that each person who has
13 the job code 33700 are doing the same or similar job
14 duties -- or have the same or similar core set of
15 job responsibilities?
16   A.   Well, they may or may not. These
17 information security analysts that we looked at in
18 NMCI were doing something totally different than
19 other information security analysts in the company.
20   Q.   And then they were reclassified -- they
21 were given different job codes?
22   A.   These individuals -- the ones within
23 NMCI were because --
24   Q.   Because they were --
25   (Simultaneous conversation.)

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1   A.   Because we determined they were doing
2 more nonexempt.
3   Q.   (BY MS. RUDICH) Because you were --
4 because you determined that they weren't doing the
5 same things as other people in the company that
6 were -- that had that job code, correct?
7   A.   Correct.
8   MR. WYMER: Objection as to form.
9   Q.   (BY MS. RUDICH) I'm sorry, correct?
10 That's why you reclassified -- that's why you gave
11 them different job codes, correct?
12   A.   We didn't compare the Navy people
13 against their counterparts in other organizations.
14 We looked at them on an individual basis by
15 themselves.
16   Q.   So even -- even -- why didn't you look
17 at them -- why didn't you look at -- why didn't you
18 compare the Navy people against their counterparts
19 in other EDS clients?
20   A.   Because we had no reason to believe that
21 there was a concern on the other. Again, I've been
22 with EDS a long time. Our managers are very attuned
23 to this. They will bring any concerns to our
24 attention. The HR people in the field bring it to
25 our attention. We have hot lines that our employees

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1 are not shy about at all to bring up concerns.
2 Unless we hear any of that, we assume that the
3 managers have coded their people correctly.
4   Q.   So every time that you get a complaint
5 or a call on the hot line, you do -- you do an
6 organization or a client wide audit to ensure that
7 everybody within that client is properly -- has the
8 right job code?
9   A.   It's a case-by-case basis.
10   Q.   My question is -- I understand it's a
11 case --
12   A.   We investigate every complaint that
13 comes in. Whether we broaden out and investigate an
14 entire account because one person calls in, I can't
15 say that we do that unless the circumstances warrant
16 it.
17   Q.   Well, wouldn't the circumstances warrant
18 it if you find out that a person -- that an employee
19 is given the improper job code?
20   A.   Depends on the circumstances why that
21 happened. It might be that that person could not
22 handle the higher end jobs that everyone else is
23 doing, so the manager is trying to assign them a
24 lower level function just to keep them employed. We
25 don't know.

44 (Pages 170 to 173)

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1   Q.   So it could be that that -- that a
2 person who -- it might be that a person who is not
3 doing the same or similar things as other people
4 with that job code should be given a different job
5 code, correct?
6   A.   Yes.
7   Q.   Okay. Thank you.
8   MS. RUDICH: I'm going to ask that
9 this document be marked as Evans Exhibit 19. It's a
10 multipage document having a Bates stamp number 9692,
11 9685, 9686, 9687, 9688, 9689, 9690 and 9691.
12   (Deposition Exhibit 19 marked.)
13   (Witness reviews document.)
14   A.   Okay. Yes.
15   Q.   (BY MS. RUDICH) Mr. Evans, have you
16 ever seen this document before?
17   A.   Yes.
18   Q.   Is this document in the book -- in
19 your -- in the book of documents that you have in
20 front of you to help you in your testimony today?
21   A.   I know what it is, so I don't -- I
22 don't -- let me go all the way through. I can -- I
23 can speak to it whether it is or not.
24   No, it's not.
25   Q.   No, it's not. Okay.

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1   A.   No, it's not.
2   Q.   I'm sorry. I see that the record
3 here -- let me go back and just ask a question
4 because I don't know if the court reporter got an
5 answer to a question that I asked before.
6   MS. RUDICH: Can you just read back
7 the question I asked about -- I can't -- off the
8 record. No, Marty, there's -- you want to take a
9 break, that's fine.
10   MR. WYMER: We're off the record,
11 and you're looking at something. I can consult with
12 my client.
13   MS. RUDICH: No, I'm not -- I'm
14 asking the court reporter to read back a question.
15 You can't consult -- I'm asking the court reporter
16 to --
17   MR. WYMER: There's no question
18 pending. I can consult with my client whenever I
19 want if there's no question pending.
20   MS. RUDICH: Are you instructing him
21 how to answer the questions?
22   MR. WYMER: No, no.
23   MS. RUDICH: Are you going to be
24 talking about anything to do with this deposition?
25   MR. WYMER: What if I am?

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1   MS. RUDICH: You can't instruct --
2 because we're not in a break. I just asked for one
3 second to go off the record, Marty. One minute.
4 You can't start talking to your client now.
5   MR. WYMER: I can if I choose,
6 but --
7   MS. RUDICH: You know you can't.
8   MR. WYMER: -- we don't have to
9 fight about it.
10   Q.   (BY MS. RUDICH) Okay. But my question
11 was so it could be that a person who is not doing
12 the same or similar things as other people with that
13 job code should be given a job code -- a different
14 job code, correct?
15   A.   What are we talking about now?
16   Q.   I'm asking you about a question that I
17 asked you before that there's no -- the court
18 reporter didn't get down the answer. You had
19 answered yes before.
20   MR. WYMER: Objection. That's not
21 what the record reflects.
22   Q.   (BY MS. RUDICH) I'm going to ask you
23 the question again. So a person who is not doing
24 the same or similar things as other people with the
25 same job code should be given a different job code,

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1 correct?
2   A.   It depends.
3   Q.   What does it depend on?
4   A.   On what functions that they're doing.
5   Q.   On what functions they're doing
6 differently?
7   A.   Yes.
8   Q.   You mean to tell me that if -- that if
9 people are doing different things than other people
10 with that job code, they should keep the same job
11 code?
12   A.   Again, you're talking in generalities.
13   Q.   Yeah.
14   A.   If you read our job codes, job
15 descriptions, they are very generic.
16   Q.   I understand they're generic. They're
17 generic so they can apply --
18   MR. WYMER: Objection.
19   Q.   (BY MS. RUDICH) -- across the company,
20 correct?
21   MR. WYMER: We're going to stop.
22 We're going to take a break. What we've not done in
23 the 20 some depositions that we've taken is engage
24 in histrionics. Mr. Evans has been sitting here for
25 five hours.

45 (Pages 174 to 177)

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1   MS. RUDICH: There's three more
2 hours.
3   MR. WYMER: Painstakingly asked --
4 there's two hours.
5   MS. RUDICH: It's an eight-hour
6 deposition.
7   MR. WYMER: Seven-hour deposition in
8 the federal rules. And he's painstakingly asked --
9   MS. RUDICH: This part of your --
10   (Simultaneous conversation.)
11   MS. RUDICH: This colloquy is not
12 going to be counted in the time.
13   MR. WYMER: But what we're not going
14 to do is slam our hands down and go like this and do
15 that stuff or --
16   MS. RUDICH: Well, I'm --
17   MR. WYMER: -- we'll stop the
18 deposition right now.
19   MS. RUDICH: Then stop and let's
20 call the court. I'm upset that an answer that he's
21 given, now he's changing his testimony on the
22 record.
23   MR. WYMER: Well, then be upset, but
24 conduct yourself professionally.
25   MS. RUDICH: I'm putting it on the

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1 record that Mr. Evans is now changing his testimony
2 because the court reporter didn't get down --
3   MR. WYMER: The record will reflect
4 what he did.
5   MS. RUDICH: The record can't
6 reflect it because the -- because the court reporter
7 did not get the answer.
8   MR. WYMER: Then it didn't happen.
9   MS. RUDICH: It did happen, and I
10 resent the fact that he's changing his testimony now
11 based upon --
12   MR. WYMER: Well, I resent your
13 histrionics.
14   MS. RUDICH: Based upon his --
15   MR. WYMER: Let's act professionally
16 or we can stop the deposition.
17   MS. RUDICH: Based upon his
18 discussion with you when I said off the record for a
19 minute. That's what I think, and that's why I
20 slammed my hand down.
21   Q.   (BY MS. RUDICH) Now, why are the job
22 codes -- why are EDS job codes written in
23 generalities?
24   A.   I don't know. I don't write them.
25 That's another department's responsibility.

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1   Q.   And if you -- and during your audit, if
2 you saw that somebody was doing -- was doing a job
3 or doing -- withdrawn.
4   And during your job audits, when you
5 review people's exemption status, if you saw that
6 they weren't doing what was set forth in the job
7 code, would you then recommend that they be given a
8 different job code?
9   A.   Yes.
10   Q.   And why is that?
11   A.   If it's not reflective -- we still try
12 to do -- try to code people as closely to the job as
13 you can -- as we can. That's always been our
14 intent. Again, the intent and the reality, as I've
15 said several times, are not -- are not always the
16 same thing. Given the opportunity to just review
17 somebody's job functions and make a recommendation,
18 we would take advantage of that, absolutely.
19   Q.   What you do mean you would "take
20 advantage of that"?
21   A.   If I just reviewed somebody's job
22 functions and determined they're really a better
23 suited fit for another job, we would take advantage
24 of that and change their job code accordingly.
25   Q.   And that's because it's EDS's policy to

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1 have everybody with -- who has the same job code to
2 be doing -- to be doing similar things, correct?
3   A.   It's not a policy.
4   Q.   What is it?
5   A.   It's our intent to do that. I can't
6 show you a policy that says everybody -- it...
7   Q.   So it's EDS's intent that everybody who
8 has the same job code should be doing the same --
9 should be doing -- should be -- should have the same
10 or similar duties and responsibilities, correct?
11   A.   To the extent we can, we try to best --
12 we try to code people to as close to the job match
13 as we can.
14   Q.   I'm going to keep asking the same
15 question.
16   A.   Well, you've been all day long, and I'm
17 sorry, you know.
18   Q.   Is it EDS's intent to make sure that
19 everybody who has the same job code has the same or
20 similar duties and responsibilities? Is that EDS's
21 intent?
22   A.   That's the intent, yes.
23   Q.   Okay.
24   A.   Have I not said that earlier today?
25   MS. RUDICH: Want to take a break

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1   now?
2   MR. WYMER: Let's do that.
3   (Recess held.)
4   MS. RUDICH: I want to mark as
5   Exhibit 20, it's an email from Trey Jefferson to
6   Mike Evans and Henry Delgado, forward job code
7   review results, and it has Bates stamp number 9842
8   through 9852.
9   (Deposition Exhibit 20 marked.)
10   (Witness reviews document.)
11   Q.   (BY MS. RUDICH) I'm just going to ask
12   you questions on the first page, Mr. Evans.
13   A.   Okay.
14   Q.   Just if that helps you.
15   A.   Okay.
16   Q.   Have you ever seen this document before?
17   A.   I'm copied on it, so I'm sure I have.
18   Q.   Is this one of the documents you
19   reviewed for today's deposition?
20   A.   I don't recall --
21   Q.   Okay.
22   A.   -- seeing it.
23   Q.   All right. Now, do you see where it
24   says on the bottom, where it says from Bob Otten, I
25   would like to request two of the job codes be

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1   changed going forward?
2   A.   Yes.
3   Q.   And was -- and what was the -- what was
4   the reasons for -- who is Bob Otten?
5   A.   He's a -- well, he's a manager in the
6   field services organization.
7   Q.   And was this in connection with the
8   field -- the hub audit that you referred to
9   previously?
10   A.   Yes.
11   Q.   And -- and when Mr. Otten -- is it
12   Otten? Do you know how to pronounce it?
13   A.   I don't know him personally.
14   Q.   We'll call him Otten. When Mr. Otten
15   asked to have two job codes be changed, was he
16   basing it on what the people -- the duties and
17   responsibilities of those two people?
18   A.   Yes. He --
19   Q.   And he was basing that -- oh, I'm sorry.
20   A.   What would typically be the case in this
21   scenario is this is the -- on the second and third
22   page, this is the results of the review and the new
23   job code that was assigned. What typically would
24   happen is the manager would take a look at the new
25   job code assigned, look at the job responsibilities,

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1   and raise a red flag if they said, wait a minute,
2   that this isn't a match. So they would contact my
3   group or the corporate compensation group and talk
4   through it at that point.
5   Q.   And that was based upon whether or not
6   these people were doing the same or similar things
7   as others with -- with the same job code, correct?
8   A.   Well, it would be based on what they
9   were doing compared to what their assigned job code
10   would be going forward.
11   Q.   Right. And -- and they would -- and
12   Mr. Otten requested a change for these two people, I
13   think it's Raman Swami and John Labuda, because what
14   they were doing matched their -- their -- their --
15   what they were doing were the same or similar as
16   others with a certain job code description, correct?
17   MR. WYMER: Objection as to form.
18   Please answer.
19   A.   Yes, in this case, it would possibly be,
20   after comparing his other individuals in that -- in
21   that role, that was his assessment.
22   Q.   (BY MS. RUDICH) And his assessment was
23   based upon the job descriptions that are attached at
24   the back of this document, on page -- I guess it
25   starts with Bates stamp number 9846?

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1   A.   Yeah, I'm assuming it is, because that
2   was a new job code that wasn't available up to that
3   time.
4   Q.   And that was based there on the fact
5   that these people were doing the same or similar
6   things as others that had the job code that they
7   wanted to give to these people, correct?
8   A.   That we had just reviewed.
9   Q.   That you had just reviewed and that's
10   attached to this document.
11   A.   Yes.
12   Q.   And --
13   MS. RUDICH: 21? I'm going to ask
14   that this document be marked as Evans Exhibit 21.
15   It's a two-page email from Jason Rosenfeld to Kathy
16   Juilfs?
17   THE WITNESS: Juilfs.
18   MS. RUDICH: Juilfs. Dated
19   September 10th, 2007, with a Bates stamp number
20   15 -- 15873 and 15874.
21   (Deposition Exhibit 21 marked.)
22   (Witness reviews document.)
23   A.   Okay.
24   Q.   (BY MS. RUDICH) Okay. Now, Mr. Evans,
25   have you ever seen this document before?

47 (Pages 182 to 185)

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1   A.   I don't believe so.
2   Q.   Okay. But Kathy Juilfs was somebody who
3 was on your team, correct?
4   A.   That's correct.
5   Q.   And have you ever heard of the name
6 Jason Rosenfeld?
7   A.   It sounds familiar, and I know Kathy
8 would have discussed the situation with me even
9 though I haven't seen this document.
10   Q.   How do you know that?
11   A.   My people try to inform me on just about
12 most of what they were doing.
13   Q.   Now, you said that your team was
14 primarily -- your team -- your team was primarily
15 focused on whether or not people were properly
16 classified under the FLSA, correct? That was the
17 focus of your team?
18   A.   That's correct.
19   Q.   Now, why would your team be handling
20 this if this had nothing to do with -- does this
21 email have anything to do with whether or not
22 someone's properly classified as exempt?
23   A.   What I believe this is about, and we had
24 several of these, is that the individual is claiming
25 he was owed overtime for a previous function.

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1   Q.   Well, he's talking about the two job
2 functions he had here, correct?
3   A.   Yes. Yes.
4   Q.   And both of those were -- both these job
5 functions -- both these job codes, systems
6 administrator advanced and systems administrator
7 senior, are both classified as exempt, correct?
8   A.   That's correct.
9   Q.   So why would your team have handled this
10 if this had nothing to do with whether or not
11 somebody was exempt?
12   A.   Well, if there was a back pay issue, my
13 group would have handled that.
14   Q.   And why would there be a back pay issue
15 if both these -- these jobs -- both of the jobs that
16 this guy -- this person held were exempt?
17   A.   Well, I can tell by this letter he's
18 alleging that he was doing nonexempt functions in
19 those prior jobs.
20   Q.   And where on this letter does it say
21 that this guy is alleging that he's doing
22 nonexempt --
23   A.   No, he's not saying it in that
24 terminology, but the way he's described the job and
25 even the message to Kathy, I was able to

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1 conservatively estimate the average overtime per
2 week at around 11 hours per week.
3   Q.   But he's not -- but there's nothing in
4 here where Mr. Rosenfeld is stating to you, I should
5 be classified as nonexempt, is there?
6   A.   It's not in here, not in this.
7   Q.   Not in this document?
8   A.   Right.
9   Q.   And both the job and Mr. -- it was
10 Mr. Rosenfeld's belief, based upon this email, that
11 the job functions were the same for -- that the job
12 functions of systems administrator senior and
13 systems administrator advanced were the same,
14 correct?
15   A.   That's what he's alleging.
16   Q.   That's what he's alleging. And he's
17 also alleging -- and this is a guy who is on the
18 job, actually doing the job, correct?
19   A.   Yes. This is also a guy whose peers
20 probably just received some overtime checks and he
21 didn't.
22   Q.   No, I understand, but both the job
23 functions that he's describing are both exempt, so
24 it didn't really matter whether --
25   MR. WYMER: Object to form. Please

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1 answer.
2   A.   I'm --
3   Q.   (BY MS. RUDICH) Both these job
4 functions were exempt, correct?
5   A.   Both of the job titles are exempt.
6   Q.   Right. And both the job role functions
7 that he's saying he did are covered by those job
8 titles, correct?
9   A.   Correct.
10   Q.   Okay. So -- and it's Mr. Rosenfeld's
11 belief, based upon this email, that the same -- that
12 these two job -- these two job codes had the same
13 core job functions, correct?
14   A.   That's what he's alleging.
15   Q.   Okay. And Mr. Rosenfeld --
16 Mr. Rosenfeld was the one who was actually doing the
17 job, correct?
18   A.   Yes.
19   Q.   So he was -- he would be in a position
20 to know whether or not two job codes were -- were
21 the same, were doing the same functions, correct?
22   A.   In his estimation.
23   Q.   Okay. Do all employees within the same
24 job code get the same employee handbooks?
25   A.   Yes.

48 (Pages 186 to 189)

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1   Q.   And -- and they're given the same
2 employee handbooks no matter which client they work
3 for, correct?
4   A.   I'm sorry, no matter which what?
5   Q.   Client they work for.
6   A.   That's correct.
7   Q.   And no matter which location they work
8 at, correct?
9   A.   Correct.
10   Q.   And whether they work from home or
11 whether they work at a -- at a client, correct?
12   A.   That's correct. Some clients may have
13 some additional requirements such as dress codes or
14 something like that, but as far as the basic
15 corporate handbook, that is correct, there's one --
16 one for all.
17   Q.   How does EDS keep track of the hours
18 that their employees work?
19   A.   For the period of, oh, gosh, 2007, 2008,
20 2009, all employees, whether exempt or nonexempt,
21 were required to enter all of their time.
22   Q.   And what's the name of the system?
23   A.   It's the SAP, SAP is the program. I
24 think it ties into the ESS system that we spoke
25 about earlier.

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1   Q.   Okay. And that's the same time keeping
2 system for all employees, correct?
3   A.   From 2007 forward.
4   Q.   2007 forward?
5   A.   Yes.
6   Q.   And that's the same -- and it doesn't
7 matter which client they -- an employee worked for,
8 correct, during this time period?
9   A.   Everyone used that time system.
10 Depending on the client, there may be -- it may have
11 been additional time tracking requirements. For
12 example, if we bill a customer for time worked,
13 there might have been a side tracking component to
14 track billable time in addition to work time.
15   Q.   Now, do you bill a client by -- by an
16 employee's job code?
17   A.   You know, I don't know.
18   Q.   Who would know that?
19   A.   I think that's going to be based on each
20 contract. So there's not a standard billing.
21   Q.   And who would know that?
22   A.   It depends on which contract you were
23 interested in.
24   Q.   Is there a department in EDS that would
25 have -- that would know this information or HP know?

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1   A.   I mean, HP -- there's a way to get that
2 information, depending on, again, which contract
3 you're interested in. There's a contract
4 administrator over each account, but there's not a
5 contract administrator department where you just go
6 to.
7   Q.   Now, is the same -- but the same -- but
8 between -- from 2007 onward, this -- this SAP system
9 was for all employees, correct?
10   A.   That's correct.
11   Q.   And it didn't matter which client they
12 worked for, correct?
13   A.   That's correct.
14   Q.   And it didn't matter which geographic
15 region they worked in, correct?
16   A.   That's correct.
17   Q.   And it didn't matter where they were
18 physically located, whether they were at home or at
19 a hub or at a client.
20   A.   That's correct.
21   Q.   And how did the employees access this
22 time system to input their time?
23   A.   Through their computer, unless they were
24 at an account where they didn't have computer access
25 for security reasons or whatever, and then there

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1 were other -- which was not typically the case, but
2 there were paper time cards kept, for example, in
3 those cases.
4   Q.   That's kind of funny. EDS is a computer
5 company and it wouldn't have access to computers.
6   A.   Well, some account like the government
7 accounts don't want people to --
8   Q.   That makes sense.
9   A.   So for security reasons, we don't have
10 total access.
11   Q.   Okay. Now, are all employees with the
12 same job code entitled to participate in the same
13 general health plans?
14   A.   Yes.
15   Q.   And are all employees with the same job
16 family entitled to participate in the same general
17 health plans?
18   A.   Yes.
19   Q.   And are all employees with the same job
20 code entitled to participate in the same, let's say,
21 401(k) program or retirement program? I'm just
22 talking about job codes.
23   A.   Yes, for full-time employees.
24   Q.   Okay. So it's really a
25 full-time/part-time distinction --

49 (Pages 190 to 193)

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1   A.   Yes.
2   Q.   -- rather than a job code distinction?
3   A.   Yes, and I'm not a benefit expert.
4   Q.   I understand, just what you know.
5   A.   Yes.
6   Q.   Okay. Are all employees with the same
7   job code entitled to -- entitled to the same
8   vacation -- all full-time employees with the same
9   job code entitled to the same vacation time or same
10   vacation benefits?
11   A.   Yes, unless they negotiated some kind of
12   deal or, you know, special circumstances, --
13   Q.   Generally?
14   A.   -- acquisition they came across with a
15   higher rate, but yes, there is a standard vacation
16   policy.
17   Q.   Okay. And what about, does EDS have a
18   stock option program? Did EDS have a stock option
19   program?
20   A.   There is a stock purchase program.
21   Q.   And --
22   A.   Stock options, I think, are really
23   reserved more for leadership management.
24   Q.   And now, do -- now, do -- do all
25   employees that have the same job code have the

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1   opportunity to participate in the stock purchase
2   program under the same terms?
3   A.   Yes.
4   Q.   Now, when you did the -- you talked
5   about an audit that you did back in 2007, 2008, and
6   did that audit lead to the reclassification of
7   certain employees from exempt to nonexempt?
8   A.   Yes.
9   Q.   And did that reassignment lead to the
10   payment of certain back or past overtime pay?
11   A.   Yes.
12   Q.   And what was -- how did you pay that?
13   What -- did you pay it by what's called one and a
14   half times or was it a fluctuating work week
15   payment?
16   A.   We paid it according to the 778.114,
17   fluctuating.
18   Q.   Fluctuating work week?
19   A.   Fluctuating work week.
20   Q.   And going forward, meaning that once
21   they were reclassified and they were entitled to
22   overtime, how was the -- how were these people paid
23   overtime, on the fluctuating work week method or on
24   a straight time and a half benefit?
25   A.   Straight time and a half benefit at that

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1   point.
2   Q.   Now, why did you pay the back pay
3   fluctuating work week and the going forward not on a
4   straight time and a half basis?
5   A.   Two reasons. We typically use a
6   fluctuating work week when we resolve back wage
7   issues with the Department of Labor. As far as the
8   going forward answer, that's really based on system
9   limitations. Our payroll system does -- is not --
10   doesn't have the advanced capabilities to be able to
11   calculate a fluctuating week, hourly rate based on
12   fluctuating hours.
13   Q.   And how did you calculate it for back
14   pay?
15   A.   We did it manually.
16   Q.   Okay. Now, when you say that you
17   typically do that when it's a Department of Labor --
18   I believe -- hold on one second. I believe you said
19   it was the -- when you resolved back wage issues
20   with the Department of Labor, did you resolve the
21   back pay issues with this -- in connection with this
22   audit that was done in 2007, 2008, with the
23   Department of Labor?
24   A.   Yes.
25   Q.   And that was -- so this wasn't a

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1   voluntary -- this was a Department of Labor
2   sponsored audit?
3   A.   No. We -- prior to us even -- before we
4   even began the audit, I had a meeting with the
5   Dallas district office and met with Julie Gallegos,
6   who is an investigator, and Glenda Smith, who is her
7   supervisor, and we were scheduled to meet with
8   Curtis Poer, P-o-e-r, who was a district director,
9   he goes by Leroy, and he was unavailable, but the
10   purpose of meeting was to go over what our intent
11   was. I showed them the questionnaire. I showed
12   them basically the whole -- the whole process of
13   what we were going to do, how we were going to pay
14   the -- pay the individuals back pay, and, in
15   essence, got them to agree that what we were doing
16   was -- was okay, and, in return for that, they --
17   they had viewed this audit as being -- as
18   supervising it.
19   I met with them several times during
20   the course of this investigation and gave them
21   updates on the status. We presented all the back
22   payments in a spreadsheet to them, so we identified
23   everybody who -- who we -- who we paid back pay to
24   to them.
25   So this was something that we

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1   initiated ourselves. It wasn't a result of any
2   complaints, any threatened lawsuits. We just
3   realized that there was a concern that we wanted to
4   proactively address, and we took it upon ourselves
5   to -- to basically put all the cards on the table
6   with the Department of Labor ahead of time.
7   Q.   Now, why would you initiate this
8   yourself?
9   A.   Why did we?
10   Q.   Why did EDS initiate this themselves --
11   itself?
12   A.   For several reasons. The one being
13   that, you know, we were aware of -- of what was
14   going on regarding the IT technicians throughout the
15   industry, you know, Red Law Labor Updates regarding
16   IBM, CSC, some of the other companies on
17   computer-related occupations. That, in conjunction
18   with the Global Field Services organization who
19   brought their concerns forward, we realized that we
20   had inadvertently may had some people coded wrong,
21   and if we were going to do it -- if we were going to
22   fix it, we were going to fix it right and do it
23   under the supervision of DOL. So that's why we did
24   it.
25   Q.   Now, let me ask you a question just so

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1   I'm clear. Is it -- and maybe I -- I forgot, but
2   was this a -- was this a companywide audit of
3   everybody who had those -- those specific job codes,
4   or was it a sampling?
5   A.   No, it was a -- it wasn't corporate wide
6   because it was limited only to U.S. based employees,
7   so we didn't look at system administrators in the
8   U.K., for example, but everybody within the U.S.
9   boundaries we did -- we did look at.
10   Q.   Okay. And when you say you were aware
11   of what was going on in IT with IBM or CIT, was that
12   other lawsuits?
13   A.   Lawsuits and challenges. Again, with my
14   continuous communication with the Department of
15   Labor, they were formulating their -- what turned
16   out to be their opinion letter that came out on IT
17   technicians just a few months after we started, so I
18   was aware of what their position was regarding these
19   folks, and, frankly, we were in agreement with it,
20   but that was the first guidance that was issued by
21   the Department of Labor that kind of shed some light
22   on it.
23   Q.   Now, when you say that -- when you
24   gave -- when you say that, you know, you -- you
25   resolved this when the -- with the -- under the, I

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1   guess, auspices of the Department of Labor, you
2   resolved these issues, did you receive Department of
3   Labor releases from individuals?
4   A.   Yes.
5   Q.   And these were relating to FLSA claims?
6   A.   To -- to overtime.
7   Q.   Overtime claims. And it covered the --
8   how far back did these releases go?
9   A.   Two years back from the date that we
10   corrected their job code.
11   Q.   And it did not cover liquidated damages
12   or double damages, correct?
13   A.   That's correct.
14   Q.   And it was only for under the
15   fluctuating work week, which is equal to -- and do
16   you -- and these releases were under the fluctuating
17   work week, correct?
18   A.   That's correct.
19   Q.   And the fluctuating work week -- can you
20   tell me how the fluctuating work week is
21   calculated -- how overtime on the fluctuating work
22   week is calculated on a...
23   A.   Yeah, you can -- we take their pay on a
24   semimonthly basis, so they get one check 24 times a
25   year. We'll multiply that, basically get their

201

1   annual salary, divide it by 52 to get a weekly
2   salary, and then you, in essence, divide the number
3   of hours that they work into the weekly salary to
4   come up with an hourly rate, and then take half of
5   that rate times any hours that they have worked over
6   40.
7   Q.   So you didn't look at it on a weekly
8   base -- on a pay period basis. You looked at it on
9   a yearly basis?
10   A.   Well, no, we used -- you used the yearly
11   basis to come up with the weekly salary, but the
12   fluctuating work week was based on an hourly -- on a
13   weekly, excuse me, calculation.
14   Q.   Okay. But doesn't the fluctuating work
15   week regulation -- doesn't the fluctuating work week
16   regulation contemplate doing that on a weekly basis?
17   A.   Yes, I'm sorry, that's what I just said.
18   Q.   So you mean to tell me they worked the
19   same number of weeks -- same number of hours every
20   week?
21   A.   They didn't. What we did for the sake
22   of this audit, though, is ask them for a number of
23   average hours per week that they worked.
24   Q.   So you did it on an average number?
25   A.   We -- yeah, that's how we -- yes.

51 (Pages 198 to 201)

202

1   Q.   You didn't do it on the actual number?

2   A.   No. No. And we gathered that

3 information -- the employees submitted that. I

4 mean, the employees would tell us, on average, how

5 many hours that they worked per week. Average

6 being, of course, some weeks they worked more, some

7 they worked less, but as far as for the calculation,

8 we used the average rate.

9   Q.   And --

10   A.   And again, this was reviewed and

11 approved by the Department of Labor.

12   Q.   And isn't it true that the fluctuating

13 work week regulation states that an employee

14 employed on a salary basis may have hours of work

15 which fluctuate from week to week and that the

16 salary paid to him pursuant to an understanding with

17 his employer, that he will receive such fixed amount

18 as straight time pay for whatever hours he is called

19 upon to work in a work week, correct?

20   A.   Yeah, that's what --

21   Q.   So -- but you didn't have the

22 information as to exactly how many hours in a week,

23 per week or per pay period each of these people

24 worked?

25   A.   Well, we used an average, and again, you

203

1 know, the average is they didn't work exactly 45

2 hours every week.

3   Q.   And just so I'm clear and the record is

4 clear, which -- which job titles were covered by

5 this audit that you were talking about that occurred

6 between 2007 and 2008?

7   A.   System administrator, system

8 administrator advanced.

9   Q.   Okay.

10   MS. RUDICH: Let's take a break.

11 I'm just going to go over --

12   MR. WYMER: Sure.

13   (Recess held.)

14   MS. RUDICH: No further questions.

15   MR. WYMER: You done?

16   MS. RUDICH: (Nods head.)

17   MR. WYMER: Okay.

18   THE WITNESS: Really?

19   MR. WYMER: I have just one

20 question.

21   EXAMINATION

22 BY MR. WYMER:

23   Q.   Mike, I know there was a lot of

24 exchanges, some calm, not so calm today. Is there

25 anything from the beginning of the dep until now

204

1 that you would like to add to or that you didn't get

2 a chance to say on any of the questions Mrs. Rudich

3 asked you?

4   A.   The -- yeah, I guess there was one --

5 just a point of clarification, and it came up a

6 little earlier. I can't remember what -- what the

7 context of the question was when we were talking

8 about the back payments and the 58 form. I don't

9 have a copy of it in front of me, so I'm not sure

10 what -- what is covered in the release, so I'll

11 defer to whatever -- whatever is --

12   MS. RUDICH: Okay.

13   A.   The 58 says.

14   MS. RUDICH: That's fine. Thank

15 you.

16   MR. WYMER: And I don't have

17 anything else.

18   (Deposition concluded at 4:26 p.m.)

19

20

21

22

23

24

25

205

1   CERTIFICATE OF DEPONENT

2

3   I have read the foregoing transcript of

4 my deposition and except for any corrections or

5 changes noted on the errata sheet, I hereby

6 subscribe to the transcript as an accurate record

7 of the statements made by me.

8

9

10   _____

        MICHAEL EVANS

11

12   SUBSCRIBED AND SWORN before and to me

13 this _____ day of _____, 20___.

14

15

16   _____

17   NOTARY PUBLIC

18

19

20 My Commission expires:

21

22

23

24

25

206

```
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 2              1350 BROADWAY
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 3               800-362-2520
 4  CASE: CUNNINGHAM VS. ELECTRONIC DATA SYSTEMS
    DEPOSITION DATE: JANUARY 26, 2010
 5  DEPONENT:  MICHAEL EVANS
 6  PAGE LINE(S)  CHANGE        REASON
 7  ____|____|_____|_____
 8  ____|____|_____|_____
 9  ____|____|_____|_____
10  ____|____|_____|_____
11  ____|____|_____|_____
12  ____|____|_____|_____
13  ____|____|_____|_____
14  ____|____|_____|_____
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21            _____
                  MICHAEL EVANS
22
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23  THIS _____ DAY OF _____, 20___.
24
    _____   _____
25  (NOTARY PUBLIC)      MY COMMISSION EXPIRES:
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207

```
 1  COUNTY OF DALLAS   )
 2  STATE  OF  TEXAS   )
 3      I, Daniel J. Skur, Certified Shorthand
    Reporter and Notary Public in and for the State of
 4  Texas, do hereby certify that the facts as stated by
    me in the caption hereto are true; that there came
 5  before me the aforementioned named person, who was
    by me duly sworn to testify the truth concerning the
 6  matters in controversy in this cause; and that the
    examination was reduced to writing by computer
 7  transcription under my supervision; that the
    deposition is a true record of the testimony given
 8  by the witness.
 9          I further certify that I am neither
    attorney or counsel for, nor related to or employed
10  by, any of the parties to the action in which this
    deposition is taken, and further that I am not a
11  relative or employee of any attorney or counsel
    employed by the parties hereto, or financially
12  interested in the action.
13          Given under my hand and seal of
    office on this, the 29th day of January, A.D., 2010.
14
15
16
17
18          _____
            Daniel J. Skur
19          Notary Public, State of Texas
            My Commission Expires 7/7/2010
20
21
22
23
24
25
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208

209

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